

The Gold War of Romania: Sustainable Development or Irreversible Damage?

Alexandra Manea

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>

 Part of the [Environmental Law Commons](#)

Recommended Citation

Manea, Alexandra. "The Gold War of Romania: Sustainable Development or Irreversible Damage?" *Sustainable Development Law & Policy* 14, no. 3 (2014): 23-34, 49-52.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE GOLD WAR OF ROMANIA: SUSTAINABLE DEVELOPMENT OR IRREVERSIBLE DAMAGE?

By Alexandra Manea*

INTRODUCTION

After almost two decades of delusive starts and ongoing battles with some of the savviest environmental groups in the world, it is a crucial moment for Europe's largest and most politically sensitive gold-extraction project, currently running in the Apuseni Mountains of Romania, more exactly in the Rosia Montana region of Transylvania. The "Rosia Montana" project was initiated in 1995 and its story to date is complex and insufficiently investigated with much of the original contract being classified as a state secret.¹ The area has been one of Europe's most prolific mining districts for over 2000 years. Referred to as *Alburnus Maior* on a wax tablet discovered in a gallery from the Roman period of gold exploitation, the place still shelters unique galleries that stand as exceptional testimony of its history and great potential.

In 1999, the mining license for the area was transferred to *Rosia Montană Gold Corporation* ("RMGC"), of which Toronto-listed company *Gabriel Resources* owns 80% and the Romanian government owns 19.3%.² The state granted operating authorizations which were later canceled by means of judicial rulings initiated by environmental groups concerned by the serious risks the use of large cyanide quantities in the extraction process created. Cyanide is acutely toxic to humans and its long-term effects are not fully known.³

What started as an environmental objection at the beginning of the last decade with a few hundred people pleading against the project, it has now become a general protest against the extremely suspicious conditions under which the contract was signed. Political leaders who strongly disapproved of the project while in opposition have become powerful advocates for it after winning the elections.⁴ Tens of thousands of people are now expressing their outrage in organized street protests all over the country and in cyberspace.⁵

At the moment, the Rosia Montana exploitation project is pending under the dark shadows of uncertainty. Will it pave the way for the sustainable development of a struggling nation or will it bring irreversible damage to a fragile state? Does it follow the principles of good governance—strongly promoted by various organizations to which Romania is part of—or is it another gnawing case of corruption fiercely fought only in theory? Has the impact of the previewed mining operations on the public health been carefully assessed?

A careful analysis in the light of democracy and sustainable development values clearly condemns the project to annulment. The Rosia Montana project runs against every single principle of good governance, as it was designed and adopted in opaqueness

and complete lack of public participation and responsibility towards environmental protection—otherwise crucial for public health.⁶ The exploitation of Rosia Montana challenges several environmental health concerns and exposes the population in the region to serious health risks, as will be shown later in the article.

The first part of this article argues that a democratic framework is not sufficient for maximizing a nation's potential. In order to achieve development, and more so sustainable development—the fulfillment of the present generation's needs without compromising the growth possibilities of future generations—we need *good governance* and increased respect for all aspects of the natural and built environment that may affect human health.

The second part of this article analyzes the Romanian government's management of the Rosia Montana gold mine in light of the eight constitutive principles of good governance: transparency, efficiency and effectiveness, equity, consensus, responsiveness, participation, accountability, and respect for the rule of law. The analysis concludes by condemning the current exploitation project, arguing that it should be annulled and thereby serve as a precious lesson for other governments tempted to ignore the right of civil society to public participation and a healthy environment. The Romanian government is currently torn between two warring sides representing very different interests. On one side is a civil society in revolt, demanding the halt of the exploitation project and respect for their right to participation in decision-making. On the other side is a controversial private mining company claiming \$4 billion in damages in the event that the exploitation project is indeed halted.⁷

Traditionally, governments and especially companies are reluctant to promote civil society as a relevant actor in shaping the exploitation contract. This approach, however, is starting to reveal its corrosive flaws and several high courts from different extractive countries around the world have started to promote a trend towards the strengthening of "environmental democracy." Environmental democracy is a relatively new term reflecting the increasing recognition that environmental issues must be addressed by all those affected by their outcome, not just by governments and industrial sectors.

* Alexandra Manea is a Fulbright Visiting Scholar at American University, Washington College of Law. Previously, she was a visiting scholar at the Law School of Hebrew University of Jerusalem. Also an attorney and PhD candidate at the Law School of Titu Maiorescu University of Bucharest, she is conducting research on good governance, grand corruption, and legal avenues to investigate and prosecute the demand-side of transnational bribery.

The last part of this article selectively presents some of the recent judgments that stress the importance of effective public participation in the mining-related decision-making process. With judicial systems from around the world becoming more and more involved in environmentally related matters, alongside several international non-governmental organizations (“NGOs”) and associations aiming to increase transparency and participation in mining contracting, the perspectives become brighter and the chances for achieving sustainable development and mitigating health risks are higher.

VALUES AT STAKE: DEMOCRACY, SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL HEALTH

Romania, a former communist country situated at the intersection of Central and Southeastern Europe, joined the league of anti-authoritarian nations after the fall of the Berlin Wall and has gradually built new institutions and liberalized the market in a democratic governance fashion.⁸ The country joined the European Union (“EU”) in 2007 after quite a difficult accession process, and as the seventh largest country of the EU, Romania stands as the homeland for great and diverse landscapes and natural resources.⁹

Officially described as a *developing country*, Romania has great development potential in terms of agriculture, tourism, and a range of industries varying from textiles to energy and metals.¹⁰ Despite this potential, the country has found itself in an ongoing transition process toward a stable and resilient market-oriented economy and society for over 20 years now.

Even though the causal link between democracy and development has been the subject of controversy for the past several decades, with some arguing that there is no actual link between them, studies show that when the countries of the world are examined as a whole, democracies do perform better than autocracies or mixed polities in terms of economic development.¹¹ Moreover, a democratic regime is naturally preferred because of, at least in theory, its humanist values and concern for the welfare of all citizens.

On the other hand, recent years demonstrate that democratic governance is not enough to maximize a nation’s potential, nor is it for increasing its people’s living standards.¹² In order to achieve sustainable development, a nation needs *good governance*.¹³

The relevance of *good governance* as a concept goes beyond conventional wisdom that generally describes it as an incorruptible and efficient process of decision-making at political, economic, and administrative levels.¹⁴ Even though there is no universal consensus regarding its clear definition, *good governance* emerged as a concept in the international development scholarship and is considered by various international instruments to encompass eight core elements: transparency, accountability, participation, responsiveness, effectiveness, equity, consensus, and rule of law principles.¹⁵

As a concept, *governance* was used for the first time in a World Bank publication in 1989 to describe “the exercise of political power to manage a nation’s affairs.”¹⁶ In 1992, the same institution issued a Report on Governance and Development, in which the concept was extended to that of *good governance*,

describing it as central to creating and sustaining an environment that fosters strong and equitable development.¹⁷ For the first time, the quality of a government and its ability to satisfy the needs of citizens, apart from economic performance, was put up for discussion.¹⁸

In 1995, the Asian Development Bank picked up the term and in 1997 so did the United Nations Development Program (“UNDP”). The latter extended the definition of governance by adding that governance “comprises the mechanisms, processes and institutions through

which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”¹⁹

In relation with the much-desired sustainable development, the terms are distinct yet highly interrelated. Sustainable development—the fulfillment of the present generation’s needs without compromising the growth possibilities of future generations—cannot be achieved without good governance because it requires sound public sector management characterized by transparency, effectiveness, equity, participation, responsiveness, accountability, consensus, and rule of law principles.²⁰

Considering that Romania has been a democracy for over 20 years and a member of the exigent EU, as well as an acceding country to the Organization for Economic Co-operation and Development (“OECD”), it is perfectly legitimate to have good governance expectations from the country’s government. Nevertheless, the gold-mining of Rosia Montana project is

“Sustainable development—the fulfillment of the present generation’s needs without compromising the growth possibilities of future generations—cannot be achieved without good governance because it requires sound public sector management. . .”

carried on with the support of the political leadership of the country against the will of the people and therefore against the most precious value of democracy.

Measuring governance is problematic due to the mixture of quantitative and qualitative factors that must be considered, which means some value judgments must be made in the process. Sustainable development theory and practice, however, developed a number of principles to serve as criteria to take into consideration when evaluating the way power is exercised in the management of a nation's economic and social resources. In the following paragraphs, the eight core elements encompassed by the concept of good governance will be analyzed in order to determine if the Rosia Montana's exploitation project follows the principles of good governance, thus paving the way for sustainable development.

TRANSPARENCY

Governments cannot engage in good governance without promoting transparency. This means managing the country's affairs according to clear and accessible rules that make officials accountable to the citizens they are supposed to represent and that provide members of the international community with the predictability and stability they need to function efficiently and productively in a globalized era.²¹ Meeting the transparency criteria is in fact crucial for the fulfillment of all other good governance elements.²²

The start of the Rosia Montana mining project was shrouded in opacity. There is no record of a fair auction process for granting operating licenses over the last 14 years; the license has been one of the best-kept secrets of the Romanian government.²³ The state company Minvest was given the license in 1999 without a bidding process.²⁴ A year later the license was passed over to the private company Rosia Montana Gold Corporation (previously Euro Gold Resources), with no public access to information regarding the existence of a fair license auction and the provisions of the ensuing contract.²⁵ The latter was categorized as "classified information."

According to the Romanian law, "classified information" includes information, data and documents of interest to national security, which must be protected, due to the levels of importance and consequences that would occur as a result of unauthorized disclosure or dissemination.²⁶ While a certain degree of secrecy can be legally and morally acceptable when it comes to a sensitive project like gold exploitation, for reasons including national interests, the question of balance between transparency and opaqueness still lingers as transparency has a strongly democratic flavor attached to it.

When a democratic executive chooses to classify a contract by which his people's resources are sold away, the government needs to offer a solid policy and a clear communication strategy. Unless it complies with these democratic requirements, the reasons for classification become doubtful and stand as a ground for turmoil. The Rosia Montana project is of high importance both for the region and country as a whole, as it involves a number

of serious changes and consequences in terms of environmental, economic, cultural, social, and political aspects.²⁷

Regionally, the project has importance because it will decisively affect the current lives of approximately 4,000 people living in the area, as well as the potential for life in the region for many years to come. Foremost, the contracted 17 years of continual exploitation implies the displacement of the populations of four inhabited mountains and all the houses, churches, and livelihoods of the people currently living there. The mining operations predict a heavy use of dynamite that leaves little to no chance of survival to the four historic churches and thousands of buildings in the area.²⁸

Moreover, use of sodium cyanide for gold solubilization and open basin storage of waste containing cyanide residues create serious concerns about toxicity.²⁹ At this point, the environment in the region is subject to high risk of irreversible damage, as the harmful effects of cyanide are not fully known.³⁰ Once the project is completed, it will leave behind a trail of open craters, moon-like terrain, and cyanide waste toxic to the air, water, and future life in the area.³¹ Living in the region will not be an option many years to come.

While it is true that the mining project will provide a few hundred jobs for a community in need of employment, it will also destroy the agricultural lands and forests which currently serve as the main source of income for thousands of people in the region.³² All the more concerning is that the gold exploitation will come to an abrupt end in the near future, leaving behind jobless people and completely unfertile lands, thus paving the way to abject poverty.³³

Thus, at the regional level, the project is of high importance as it literally involves the future of the area and of the people who have been living there, their lives, and the lives of the future generations. At the national level, the Rosia Montana mining project has substantial importance for several reasons.

First, it foresees the exploitation of the richest natural known part of the country. Every country in the world probably wishes for great natural resources to strengthen its economy and contribute to the nation's development. In line with democratic values, resources should be extracted and exploited for the benefit of the people's life standards in a democratic society. The much desired metals sheltered by the Romanian mountain are estimated at 330 tons of gold, 1,600 tons of silver, and "other precious metals."³⁴ The latter category has been the subject of numerous questions: What kind of metals? What is their value? Who will get them? All legitimate questions left without any answers.

Moreover, the classification of the biggest part of the contract between the government and RMCG caused a series of assumptions that any additional metal recovered will be for the benefit of the foreign company.³⁵ All the more unsettling, according to the National Agency for Mineral Resources, the "other metals" are said to be more precious than the gold or silver to be exploited. The precious metals to be extracted are of great strategic value and are part of the public domain, which means, according to Romanian law, that they belong to the nation's

people.³⁶ In the actual context of global economic turmoil, the gold of Romania should not be given away through a particularly controversial contract.

Secondly, the area represents a valuable cultural, archeological, and architectonic patrimony. Rosia Montana village is included on the official list of national historical monuments.³⁷ Moreover, the mountain has been proposed for inclusion on the United Nations Educational, Scientific and Cultural Organization's ("UNESCO") World Heritage List.³⁸ To reach the list, however, the Romanian government needs to add the site to its Tentative List, which has not happened because of obvious political interests.³⁹ But, the site shelters 2,000 year-old galleries from the Roman era, which are an outstanding example of a type of technological ensemble illustrating a significant stage in human history, advancing the argument that it should be designated a UNESCO World Heritage Site.⁴⁰

Also, in accordance with UNESCO criteria, the area bears an exceptional testimony to a cultural tradition or to a civilization that is living or that has disappeared.⁴¹ The historical and cultural value of the site is thus exceptional and goes beyond the regional and even the national level.⁴²

Thirdly, the project has attracted more civil society involvement than any other previous governmental contract. The

perspectives of exploiting Rosia Montana with cyanide have initially sparked the protest of environmentalists that subsequently became a general protest against the opacity of the whole project and the lack of a clear, sustainable policy on the matter. More than twenty thousand people went out on the streets to express their outrage toward the government's infantile responses to the people they are supposed to represent.⁴³ Also, tens of thousands of people have been involved in social media protests in hopes that 24 years after the anti-communist revolution, democracy is not only a utopia and that their voice will be taken into consideration. The case of Rosia Montana has become much more than an environmental issue or a bad deal for a developing country, it is now about challenging the values of democracy in practice to see if they pass the test.

Contrasting with the government, the Romanian Parliament issued a report on the matter, concluding, *inter alia*, that with the exception of the deposit maps, the operating license for Rosia Montana does not contain any information that justifies the secrecy of the document. Given the extent of the interest shown for this project, the Commission tasked with the report writing considered that the declassification would help restore

a balanced dialogue between the supporters and opponents of the exploitation.⁴⁴ Nonetheless, the government refused to offer more information regarding the contract.

Recognizing the limits of transparency in the face of some security interests, a democratic government has to conduct business at the expense of the nation's welfare in such a way that substantive and procedural information is available to, and understood by, people and groups in society. An increased level of information would eliminate a lot of uncertainties, troubling questions, and especially suspicions of corruption and bad governance.

EFFICIENCY AND EFFECTIVENESS

Effective and efficient governance is integral to any country's well-being and requires that public institutions produce

results that meet the needs of its stakeholders, while making the best use of resources—human, technological, financial, natural and environmental. In the context of good governance, the concept of efficiency also covers the sustainable use of natural resources and the protection of the environment.⁴⁵

Resources are, by definition, destined to be harnessed. Natural resources predict welfare, and every country in the world wishes for a

resourceful territory. Nevertheless, the earth's natural resources are finite, which means that their continuous exploitation will result in exhaustion. The extraordinary resources sheltered by Rosia Montana should be exploited at some point in the future; however, in the light of efficiency and effectiveness criteria of good governance, the gold-extraction project should be at least postponed and reevaluated, for three main reasons.

First, given the amplitude of the project, the benefits that would revert to Romania are not worth all the costs the project's completion involves at this point. The exploiting company drives an aggressive propaganda campaign estimating the benefits for the Romanian economy at \$4 billion "in the best case scenario."⁴⁶ According to the contract between RMCG and the government, the latter receives 19.3% proportional share of the project's profit and a 6% royalty fee.⁴⁷ Also, another proposed direct benefit is the creation of jobs and related fees. A thorough economic analysis of the project's profitability for Romania is beyond the scope of this article, but even without an in-depth analysis one can evaluate that "the best case scenario" is most likely impossible.⁴⁸ A 6% royalty fee is injuriously low and prejudicial compared to other types of production sharing agreement types

“The case of Rosia Montana has become much more than an environmental issue or a bad deal for a developing country, it is now about challenging the values of democracy in practice to see if they pass the test.”

practiced in different parts of the world.⁴⁹ Moreover, the money brought to the budget by Rosia Montana's exploitation is insignificant in comparison with the country's development needs and especially with the costs implied by the project's completion.⁵⁰ In terms of money, the government will have to cover 19.3% of the project's implementation costs to pay the unemployment benefits for thousands of people both now as a consequence of destroying the agricultural lands in the area and at the end of the mining project for the miners. Additional costs in the "best case scenario" will include the environmental rehabilitation of the area and damage control in terms of environment and social life in the region.⁵¹ A less perfect scenario, and more realistic one, would therefore imply more costs.⁵²

Economic impact studies premise the interconnectivity of sectors in an economy. As such, in the opinion of Nobel laureate Wassily Leontieff, a positive change in a sector will have significant positive impacts on the economy of a country only when it is connected to other sectors.⁵³ The metal extraction industry in Romania is not linked to any other in the country, and the wages from employment likewise will not generate any impact considering the small number of jobs provided and the relatively short employment period.

Second, Romania is a country in transition. While a member of the EU, the political situation of the country has been characterized lately by instability and deep mistrust in the leadership, irrespective of the ruling party.⁵⁴ The contract for Rosia Montana's exploitation was signed more than 15 years ago by a weak and inexperienced government, as the country just came out of a traumatic communist era.⁵⁵ The prospect of earning money, no matter the source, was highly attractive, as the country was struggling to find its way in the new world of capitalism. Nevertheless, time passed and Romania's economy and political class has evolved. The current government should apply more professionalism, expertise, and responsibility in managing rare and valuable natural resources and not rush into exploiting them, especially on the basis of a deal made in extremely vulnerable times. The price of gold has constantly increased in past years, and the recent global economic crisis has shown the strategic importance of precious metals.⁵⁶ Since the 2008 financial crisis, the price of gold has skyrocketed—in three years more than doubling from \$800 per ounce to \$1,900.⁵⁷ Economic development policies of developed countries include the exploitation of their natural resources among the last priorities on their list.⁵⁸ The Romanian government should learn from the paradox of resourceful but yet poor and undeveloped countries in the world and reshape its decision-making process urgently.

Lastly, pollution in the Rosia Montana mining area has already caused extensive damage to the environment.⁵⁹ The RMCG project predicts four open pits and the creation of a waste storage basin behind a 180-meter-high dam.⁶⁰ Aside from being a serious disfigurement to the landscape, the proposed barrage is weak in the face of extreme situations that resulted from several other similar projects.⁶¹ Also, the use of sodium cyanide in the extraction process and the storage of the cyanide residues in an open pool create major concerns. Even if the promised cyanide

neutralization would be professionally achieved, the tailings toxicity remains a serious source of risk.⁶² In all, 12,000 metric tons of cyanide would be used annually which would produce 13 million tons of mining waste each year, according to a project presentation submitted by the company to the Ministry of Environment.⁶³

In 2004, the Romanian Academy of Science—the most authoritative scientific body in the country—called for the project to be scrapped because environmental and social costs far outweighed benefits.⁶⁴ While it is true that more than half of all the gold and silver mines in the world rely on the cyanide, its use is still controversial, as spills have the potential to inundate entire ecosystems with toxicity.⁶⁵ Recent cyanide-related disasters in the EU alone include Stava (Italy, 1985),⁶⁶ Los Frailes (Spain, 1998),⁶⁷ and Baia Mare (Romania, 2000).⁶⁸ The worst of these accidents was Baia Mare which took place at a gold mine in the northern part of the country, where heavy rains and snow caused a breach in a tailings dam. Drinking water supplies were cut off for almost 3 million people in Romania and neighboring Hungary and Serbia, and hundreds of tons of fish in the nearby rivers were killed.⁶⁹

In 2010, the European Parliament proposed a complete ban on the use of cyanide mining technologies, noting that "over the past 25 years more than 30 major accidents involving cyanide spills have occurred worldwide," and that "there is no real guarantee that such accidents will not occur again, especially taking into account the increasing incidence of extreme weather conditions, *inter alia* heavy and frequent precipitation events."⁷⁰ The EU Commission did not support the ban at the time "due to the lack of affordable alternative technologies,"⁷¹ and thus not because cyanide would be the best or even a good option for the environment, but for financial reasons. Various alternatives to cyanidation are currently under development and manners to extract gold will improve in the future, as technology is rapidly evolving.⁷²

Why take so many risks now and damage the environment, endanger future life in the area and waste precious resources? The precious metals of Rosia Montana are not going anywhere anytime soon.

Efficiency and effectiveness in managing the affairs requires that the results meet the needs of its stakeholders while making the best use of resources. The results of the current contract between RMCG and the Romanian government will arguably meet only the high and selfish expectations of the private company, leaving Romania and its people to struggle with the long-term environmental, economic, social, and cultural consequences.⁷³

PARTICIPATION

Participation is an integral element of good governance. It refers to different mechanisms and opportunities through which the public may express opinions regarding political, economic, social, or other types of decisions taken at the governmental level.⁷⁴ The participation requirement aims at ensuring that the decision-making procedure for the Rosia Montana mine proposal

is democratic, based on public approval, and in full compliance with the constitutional rights of the directly affected population.

Valuable participation requires accurate and sufficient information for the citizens, NGOs, businesses, and others outside the government so they can contribute to and comment on proposed rules or contracts. In the Rosia Montana project, as analyzed above, the transparency requirement has been consistently ignored, leaving civil society and other interested actors with insufficient information from the beginning.⁷⁵ However, like never before, this has not discouraged civil society, and both citizens and NGOs have struggled for their right to participation, inherent to the culture of democracy.

Several NGOs have submitted reports and letters to the government requesting more information on the one hand and presenting relevant arguments regarding the inexpediency of the project in terms of environment, economic, social, and sustainable development matters on the other.⁷⁶ Moreover, tens of thousands of citizens from all over the country organized weekly street protests to express opposition to the Rosia Montana deal and outrage against the government's weak performance.⁷⁷ Not only did the government ignore the public opinion, but political leaders have been trying to quell the mobilization against the mining project and have offended the participants on numerous occasions. Besides qualifying the protesters as "jobless hipsters" and "poets scared by industrialization,"⁷⁸

the government defied any common sense and urgently constituted a "special commission" for the final approval of the project which was formed by politicians who previously expressed their support for the mining project.⁷⁹

Participation is important because it brings legitimacy. Along with transparency, respecting the principle of participation significantly improves the quality of the decisions, therefore increasing the chances for sustainable evolution and well-being of a nation.

RESPONSIVENESS

The responsiveness of government to the needs of citizens is one of the defining elements of good governance. Does the way in which Rosia Montana's exploitation contract was negotiated and handled express responsiveness of the successive Romanian governments or attention to the people's needs and moreover, to their expressed requirements on the matter? Responsiveness requires, in the first place, that representatives of government

acknowledge the needs of the citizens in order to act on their behalf.

In the light of: (a) the permanent displacement of 4,000 people in the area, (b) the insignificant economic gains, (c) the massive protests of tens of thousands people both on the streets and in cyberspace, and (d) the complete consumption of a natural resource whose value is continuously increasing, the answer is obvious. In the actual conditions, the project efficiently responds only to the profit-hungry global market forces.

CONSENSUS

Good governance requires mediation of the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on

what is needed for sustainable human development and how to achieve the goals of such development.⁸⁰

An effort to grow the public sympathy for the Rosia Montana deal has been the seemingly close alliance between Gold Corporation, politicians across the political spectrum, and mainstream media. Political rivals have declared themselves in favor of the project and most media trusts in the country have run Gold Corporation advertisements while failing to cover arguments against the exploitation and the mass protests taking place on the streets.⁸¹

The principal interest of the RMGC is to make as much money as possible and then vanish from the Romanian territory. The interest of the government, though theoretically the well-being of the country and its citizens, is actually obtaining some worthless money for the national budget and high benefits for the personal pockets.⁸² The people's interest is genuinely a better life standard and a safe environment both in terms of nature and economy. The Rosia Montana's governmental management lacks any policy for sustainable human development in the area and no long-term plan of action for fructifying even the low benefits coming out from the deal. Remarkably, Romanian civil society understood how the exploiting contract goes against its interests and fights to be taken into consideration.⁸³ At this point, however, there is no consensus and the important question of who is supposed to make decisions is completely ignored.

EQUITY

Equity is a pretentious and often utopic principle. In the context of good governance, it is about the equal participation

“Not only did the government ignore the public opinion, but political leaders have been trying to quell the mobilization against the mining project and have offended the participants on numerous occasions.”

of all citizens in public and political life. It requires that all members of the society feel that they have a stake in a matter and are not excluded from the community. As currently envisaged, the Rosia Montana's exploitation project considers the preferences of a very small group of actors, unrepresentative of the Romanian society and, moreover, not representative of the community in the region. The relevance of a few hundred people securing jobs in the mining operations for a few years pales in comparison with thousands of people who will lose their homes and livelihoods in other industries.

In a different approach, the extraction of 1,600 tons of silver and 300 tons of gold in the near future in a way that: (a) subjects the environment to destroying levels of toxicity, (b) implies the exhaustion of the natural resources, and (c) deprives the country's economy of relevant improvement potential, negatively and decisively affects the rights of the future generations; and this, not even in the benefit of the present generation who is subjected to high health risks.

ACCOUNTABILITY

Accountability is the guiding principle that defines how progress is reported and measured and how interactions take place when things go wrong. Respecting the principle of accountability translates into the executive's branch obligation to explain its decisions and activities, to accept responsibility for them, and to disclose the results in a transparent manner.⁸⁴

The lack of accountability is dangerous because it allows decision-makers to slide down the slope of corruption, at the expense of the well-being of those who they are supposed to represent.⁸⁵ Accountability aims at ensuring that government officials are acting in the public interest, not for their own personal benefit or for the benefit of powerful and influential special interests.

The political discourse of the decision-makers in Rosia Montana's exploitation was often contradictory and inconsistent.⁸⁶ Strongly supported by political leaders while advancing in obscurity, the project started to receive opposition from the same politicians once in the spotlight of public attention.⁸⁷ The electoral promises, which guaranteed that the exploitation at Rosia Montana would not start, have been ruthlessly broken.⁸⁸ Moreover, the Romanian Prime Minister made contradictory statements regarding the opportunity of the project while in office. Having also the capacity of a Member of Parliament, the Prime Minister stated that as deputy he would vote against the project, but as Prime Minister would vote for the continuation of the project.⁸⁹

Generally, voters do not have any direct way of holding elected representatives accountable during the term for which they have been elected. Parliamentary systems, however, give parliaments power to hold the government accountable. In the Rosia Montana story, the parliamentary Special Commission for Rosia Montana remarkably stopped the advancement of the mining project in its current form at the beginning on November 2013.⁹⁰ The Commission underlined transparency and rule of law gaps in the overall management of the contract and required

the elaboration of a suitable legal framework to accommodate Rosia Montana's exploitation.⁹¹ But, the Commission did not address the serious environmental and economic issues and did not balance the costs and benefits of the deal.

While the momentary halt of the mining project is somewhat encouraging for civil society, the partial tackling of the problems by the Special Commission is worrying. Considering the manner in which the government previously disregarded the rule of law principle, the atmosphere is already poisoned, and mistrust is omnipresent.

RULE OF LAW

Romania entered the path of democracy in 1989 and has struggled ever since to strengthen its rule of law. Although successful in general, at least in comparison with the communist era, the rule of law principles have been constantly challenged by succeeding governments due to corruption or lack of professionalism.⁹²

The rule of law represents a system in which, *inter alia*, (1) the process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient and (2) the laws are clear, publicized, stable, and applied evenly; and protect fundamental rights, including the security of persons and property.⁹³ Good governance, which makes societies prosperous, is not possible without upholding rule of law principles.

Beyond granting the operating license to the Canadian company without the auction required by Romanian law at the time, in August 2013, the Romanian government issued a questionable draft law entitled "Certain measures for the gold and silver exploitation of the Rosia Montana perimeter and for stimulating as well as facilitating mining activities in Romania,"⁹⁴ the last piece of legislation on the matter to date.

A thorough analysis of the proposed law reveals many provisions which seriously infringe upon the Romanian Constitution, several international treaties ratified by the country, EU Directives, as well as national legislation.⁹⁵ In essence, the government prepared, approved, and was ready to act in accordance with a bill that would unduly restrict constitutionally guaranteed private property rights, access to justice, the right to a healthy environment, and the right to cultural heritage.⁹⁶ The provisions envisaged by the government also undermine the separation of powers, the principle of legality, as well as vital powers of the various public authorities involved in the approval and issuance of environmental, mining, urban planning, and construction works regulatory acts.⁹⁷

According to the Romanian Law no. 24/2000, draft legislation has to comply with the provisions of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, as well as with the practice of national courts on the matter in question. The draft law concerning Rosia Montana's exploitation does not respect such requirements, as the national courts have already decided against the mining authorizations and the European Court of Human Rights ("ECHR") has ruled on similar issues in the same tone of opposition.⁹⁸

In 2009, *Tatar v. Romania* arose when two Romanian nationals launched complaints against Romania on account of the Romanian authorities' failure to protect the right of the applicants, who lived in the vicinity of the Baia Mare gold mine, to enjoy a healthy and protected environment.⁹⁹ The ECHR held that "pollution could interfere with a person's private and family life by harming his or her well-being, and that the State had a duty to ensure the protection of its citizens by regulating the authorizing, setting-up, operating, safety and monitoring of industrial activities, especially activities that were dangerous for the environment and human health."¹⁰⁰

The Court also underlined that authorities had to ensure public access to the investigations and studies. It reiterated that the State had a duty to guarantee the right of the public to participate in the decision-making process concerning environmental issues.¹⁰¹ It stressed that the failure of the Romanian Government to inform the public, in particular by not making public the 1993 impact assessment on the basis of which the operating license had been granted, had made it impossible for members of the public to challenge the results of that assessment.¹⁰² The Court concluded that the Romanian authorities had failed in their duty to assess to a satisfactory degree the risks that the company's activity might entail and to take suitable measures to protect the rights of those concerned with regard to their private lives and homes, within the meaning of Article 8, and more generally their right to enjoy a healthy and protected environment.¹⁰³

In 2004 and 2006, the ECHR ruled in *Taskin v. Turkey* that the Turkish authorities violated the right to private life (art. 8) and the right to a fair trial (art. 6) by granting licenses for gold extraction using cyanidation techniques to private companies.¹⁰⁴ The initial gold mining permits were annulled by the court because they were not consistent with the general interest of the community and because their provisions did not sufficiently tackle the health and environmental risks.¹⁰⁵ Based on new reports stating that risks have been analyzed and reduced, the Turkish government issued new permits allowing the use of cyanide.¹⁰⁶

The Court recognized the interest that domestic authorities may have in maintaining economic activities, yet appreciated that such interest cannot prevail over citizens' right to the benefit of a healthy environment.¹⁰⁷ Moreover, the Court pointed out

the dangers of cyanide use in the technological process with regard to groundwater pollution and the destruction of the local ecosystem.¹⁰⁸

In light of the above, the draft law issued by the Romanian Government in late August 2013 completely ignored the European Court of Human Rights jurisprudence. Accordingly, the draft violates both the international obligations and national legislation of the country.

The motivation of the draft law also ignores the compliance with national jurisprudence requirements stipulated in art. 21 of Law 24/2000.¹⁰⁹ Several national courts, including the High Court of Cassation and Justice, annulled different administrative acts regarding the commencement of exploitation in Rosia

Montana area.¹¹⁰ Even though the Romanian Court of Justice gave a negative verdict with regard to the absence on the part of the corporation of the necessary documents that are mandatory for starting the project, local and national authorities have released replacement documents thus transgressing the Court's decision and undermining the rule of law.¹¹¹

Article 3(2) of the draft law declares the mining project in Rosia Montana to be a public utility project of "particular national interest" and the following articles establish a special expropriation procedure for the properties in the Rosia Montana mining area.¹¹² Nevertheless, existing legislation does not mention anywhere the concept of "particular national inter-

est." Categorizing the project as "of particular national interest" without defining the concept and motivating the decision goes against the well-established principle of legality. Moreover, even the "public utility" and "national interest" categorization contradicts the Constitution because the cataloging was "not established according to the law" as Article 44(3) of the Romanian Constitution requires. In declaring the project of public utility, the government ignored Law no. 33/1994, which reasonably requires a preliminary analysis of the project from an urban perspective and its registration in the urban plans.¹¹³ Likewise, the government ignored Law no. 255/2010, which fails to encompass the exploitation of gold and silver ores as a basis for declaring the public utility of a project.¹¹⁴

In a rule of law system, expropriation comes as an exception to the strongly guaranteed right to private property, therefore expropriation has to be conducted according to clear and

“The provisions envisaged by the government also undermine the separation of powers, the principle of legality, as well as vital powers of the various public authorities involved in the approval and issuance of environmental, mining, urban planning, and construction works regulatory acts.”

thoroughly motivated procedures and accompanied by solid guarantees of fairness from the state.¹¹⁵ According to the government's bill, the expropriation in the Rosia Montana area will be done through the license owner, who will also establish the amount of compensation payment.¹¹⁶

The current law, as well as the jurisprudence of ECHR, stipulates that the payment of compensation for expropriated property must belong to the State.¹¹⁷ The contrary situation proposed by the bill leads to a deeply unconstitutional situation considering that the state's sovereign powers would be exercised by a private company in such a delicate matter, and the state would be unable to efficiently protect property rights or provide answers to compensation measures set by the licensee, whose primary interest is to generate as much profit as possible.

Moreover, Romanian legislation provides a clear and efficient expropriation procedure through the domestic court in whose jurisdiction the property is situated,¹¹⁸ but the government created an exceptional procedure without any legal ground and without any motivation.

In addition, the bill exceptionally grants the company an extended period of 36 months to begin work and no delay penalty requirements. This contravenes Law no. 33/1994, which stipulates that the period within which work must start is one year and that former owners may request their property returned if this stipulation is not followed.¹¹⁹ The latter exception is also contrary to the principle of equality, as the private company is unjustifiably given an advantage over other companies.

Article 4 of the governmental bill states that if, after the issuance or permits, agreements, or authorizations on the mining project, new elements intervene or underlying conditions change, the competent authorities will issue other administrative acts or revise the existing ones without any other preliminary acts.¹²⁰ Given that Law no. 85/2003 regarding mining activities provides that to the extent that the underlying conditions for the initial authorization change, the holders of the activity must apply for new approvals, permits, and authorizations.¹²¹ Consequently, in order to issue new administrative acts, the authorities need new documentation to support the modification.

Nevertheless, the bill provides that the initial preliminary acts prepared by the mining company, can be used indefinitely, regardless of how many changes would occur.¹²² The provisions safely pave the way to the absurd and unlawful situation in which the initial preliminary acts could be used at any time in the future to legitimize activities that have nothing to do with the performed activities.

In the same manner of ignoring the principle of legality, Article 14(3) of the bill requires the National Agency for Mineral Resources to reconfigure the perimeters of operating licenses adjacent to the mining area at the request of the private mining company.¹²³ According to Article 19 of Law no. 85/2003, the exploitation perimeters are established by the Agency before granting operating licenses and their configuration is exclusively the prerogative of the competent authority.¹²⁴ Under the bill, Rosia Montana Gold Corporation's mining perimeter does not have any fixed limits; therefore, the National Agency for the

Mineral Resources is bound to reconfigure them whenever the private company asks for it without any established regulatory procedures.

Through Article 5, the bill imposed a time limit of three months in which the procedures for environmental impact assessment are to be performed, thus significantly reducing the public's right to participate in the decision-making process. The Protocol regarding Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in Transboundary Context adopted at Espoo in 1991,¹²⁵ ratified by Romania and transposed into Law no. 349/2009,¹²⁶ states that the strategic environmental assessment is a complex procedure that involves a thorough evaluation of the likely environmental effects, including health, of a certain project. This implies the execution of an environmental report, the consultation of public with the scope of ensuring participation, as well as a strategy that takes into account the conclusions of the report and of the public consultations.¹²⁷

In the least complex case, considering all the requirements, the referred procedure would require more than nine months; all the more in a large scale mining operation involving the use of cyanide in large areas of land with transboundary effects, which brings with it the obligation to consult neighboring countries.¹²⁸ With a time limit of three months, the public's right to participate in the decision is practically nonexistent, as the interested organizations and individuals are effectively unable to become informed and collect technical information independent of the owner's plan; however, the bill is effective at removing the basic right to public participation in decision making.

Moreover, the once again exceptional condition of allowing only three months for the completion of such important procedures is not motivated in any manner. The deadline is unreasonable and stands as a violation of the Protocol regarding Strategic Environmental Assessment¹²⁹ and of one of the most fundamental democratic rights: the right to public participation in decision-making.

The bill's motivation does not contain a preliminary assessment of environmental impact and does not indicate the difficulties that may arise in the implementation of the proposed regulations. Law no. 24/2000 on legislative techniques requires a comprehensive motivation for the elaboration of a new normative act, with impact assessment in terms of environment, human rights, society or different domains, depending on the act's subject and objective.¹³⁰ Not only does the bill fail to provide any motivation, but it actually mentions that in terms of environmental assessment "the present act does not refer to this topic" and continues with the only offered coordinate in terms of social impact: "the project will create jobs."¹³¹

It is almost superfluous to note how inappropriate it is that a bill relating to the gold and silver ores exploitation through controversial technology—one that poses serious damaging risks to the environment and ignoring the people's opposition—does not provide a section specifically designed to provide environmental impact assessments.¹³² Also in contradiction with Law no. 24/2000 requirements, the act fails to outline the difficulties that

“Beyond a series of controversies and legal gaps related to mining in most of the extractive countries, there have also been several noteworthy improvements of the relevant legal framework.”

might arise in the implementation of the proposed regulations. Although difficulties definitely exist (in terms of environment, right to private property, etc.), the bill ignores such aspects and limits its comments to praising the economic advantages of the mining project. In doing so, the government also ignored the Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, known as the “EIA” (environmental impact assessment) Directive.¹³³

Within the context of intensified worldwide social relations which “link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa,”¹³⁴ a look at the international trends concerning mining-related judgments can bring to light a bright perspective on the struggle for environmental democracy. As previously proven, extractive deals made by governments and corporations without public participation often do not consider the people’s interest. The only way for things to change is by the strengthening of the so-called environmental democracy and the right to a healthy environment.

INTERNATIONAL JURISPRUDENTIAL TRENDS: STRENGTHENING “ENVIRONMENTAL DEMOCRACY” AND THE RIGHT TO A HEALTHY ENVIRONMENT

From a global perspective, the “rules of the game” in the global mining industry have not yet been defined. As the planet’s resource management is known to be one of the 21st century’s main challenges whereby consumption exceeds available natural resources, mining activity has finally come into focus due to legislative and jurisprudential developments, as well as in the public’s attention.

Beyond a series of controversies and legal gaps related to mining in most of the extractive countries, there have also been several noteworthy improvements within the relevant legal framework. National courts have been facing an increasing number of cases related to mining over the past years. While many of the cases involve highly technical issues, requiring expertise from different fields, a number of judgments stand as valuable milestones on the way to environmental democracy.

The concept of environmental democracy reflects increasing recognition that environmental issues must be addressed by all those affected by their outcome, not just by governments and industrial sectors,¹³⁵ which prove reckless to civil society’s

long-term interest. Access to environmental information and effective public participation in the decisions regarding the environment, as well as taking into account civil society’s position, are integral to the concept of environmental democracy and are important for the achievement of real and valuable development.¹³⁶

Although governments and especially companies are reticent to the promotion of civil society as a relevant actor in shaping the exploitation contract, several courts of justice from relevant extractive countries have recently stressed the importance of going beyond democratic theory to ensure public interest as it relates to mining is fully considered in the decision-making process. The Supreme Court of Canada, after a lengthy legal battle in a case centered on the proposed Red Chris mine in British Columbia, ruled in March 2010 that the federal government cannot split projects into artificially smaller parts to avoid rigorous environmental assessments. The Court argued that such “project-splitting” violates the principles for conducting proper environmental assessments and the right to effective public participation.¹³⁷

On a different continent but in the same year, India remarkably established the National Green Tribunal (“NGT”) dedicated to ridding the court system of environmental cases involving multi-disciplinary issues. The National Green Tribunal is India’s first environmental court tasked with a wide jurisdiction over violations of environmental laws but also aimed at providing for compensation, relief, and restoration of the ecology in accordance with the polluter pays principle and powers to enforce the precautionary principle. In May 2012, in the *Adivasi Majdoor Kisan Ekta Sangthan and Others v. Ministry of Environment and Forests* case, the Tribunal ordered the annulment of an environmental clearance granted to a steel company.¹³⁸ After watching a recording of the public hearing process featuring extensive disturbances, the Tribunal concluded that the entire environmental impact assessment procedure had been vitiated as the public hearing process was not properly conducted and, consequentially, the decision-making process was void of effective and efficient public participation.¹³⁹

The Colombian Constitutional Court concluded in May 2011 that the Colombian State is obligated to mandate the participation of ethnic minorities in decisions that affect them, recognizing the fundamental right to previous consultation, in a case where four citizens instituted a constitutional claim against Law no. 1382 of 2010, which amends Law no. 685 of the 2001

Mining Code.¹⁴⁰ The Court also required the Colombian government to respect the cultural and historical relationship between tribal people and land, in a harsh critique brought to the same Law 1382 for severely affecting indigenous communities that are situated in zones susceptible to mining exploitation.¹⁴¹ The ruling also establishes a valuable legal precedent than can be used to bolster indigenous and tribal communities' rights in other legal cases throughout the Americas.

In April 2012, in a case before the Supreme Court of Argentina, the plaintiffs—residents of the Province of San Juan against Barrick Exploration Argentinas S.A. (“BEASA”) and Exploraciones Mineras Argentinas (“EMA”) S.A.—sought to require the companies and the Province to provide a financial guarantee that they could remediate any damage caused by mining prospecting, exploration, exploitation, closure, and post-closure of the site.¹⁴² The companies operated a bi-national mining project between Argentina and Chile encompassing a part of the Biosphere Reserve of San Guillermo, an area included in the UNESCO list.¹⁴³ The Supreme Court considered all grounds advanced by the plaintiffs and required the Province of San Juan and the National State to report whether they have conducted all necessary environmental impact studies required by the Protocol signed by Argentina and Chile, in addition to the Treaty on the Integration and Complementary Mining for the Pascua-Lama project.¹⁴⁴

In 2011, the Supreme Court of India made a landmark judgment in the *T.N. Godavarman Thirumulpad v. Union of India* case.¹⁴⁵ The Court applied the constitutional doctrine of proportionality to environmental matters to balance environmental protection and sustainable development and issued detailed guidelines and directions to the central government to appoint a national regulator to evaluate projects. Even though the case did not tackle public participation in particular, the judgment presents high potential for further reforms in environmental governance when the Court showed its readiness for different kinds of remedies.¹⁴⁶

With regard to international courts of human rights, both Inter-American and European Courts have tackled cases related to environmental issues and the right to participation. In 2012, in *Sarayaku v. Ecuador*, the Inter-American Court of Human Rights held Ecuador liable for breaching the property rights of the Sarayaku people and for failing to consult the group concerning the exploitation of their land for crude oil.¹⁴⁷ Petroecuador entered into a contract with the Argentinian Compania General de Combustibles (“CGC”) to explore and exploit crude oil in the “Bloque 23” area of the Amazon where the Sarayaku indigenous group has an ancestral claim to 65% of the land. During mining activities, caves, waterfalls, and underground rivers were destroyed, including sources of drinking water and spiritual sites. In a noteworthy judgment, the Court awarded the Sarayku people \$1,340,000 in damages, demanded the removal of subsurface explosives, and ordered adequate consultation with the Sarayaku in the future, along with adequate legislation to ensure consultation of indigenous people in future actions.¹⁴⁸

In 2009, the European Court of Human Rights found in *Tatar v. Romania* that the Romanian authorities had failed in their duty to assess to a satisfactory degree the risks that the mining company's activity in the Northern part of the country might entail, and to take suitable measures to protect people's right to private life and home and, more generally, their right to enjoy a healthy and protected environment.¹⁴⁹ The European Court considered that the company breached the precautionary principle, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the State in adopting effective and proportionate measures to restore the situation. Also, the Court noted the lack of effective public participation and condemned the authorities for not taking into consideration the civil society's repeated warnings.¹⁵⁰

Reflecting on some of the recent judgments regarding mining-related matters, new directions justify hopes for an enhanced environmental democracy. Courts are confronted with mining-related cases increasingly, and judgments comprise a wide variety of remedies: from the creation of a separate regulator for evaluating environmental projects, as shown by the Indian Court;¹⁵¹ to the guarantee of reparations in case of damages, and more notably, taking responsibility for *any type of potential* damage, as required by the Supreme Court of Argentina;¹⁵² to the strengthening of public participation in a way that ensures its effectiveness and efficiency, as underlined by the Green Tribunal of India and reiterated by the Colombian Constitutional Court.¹⁵³ The international human rights courts approached the environmental cases with high precaution, but both have raised awareness on the multidimensional nature of mining projects and showed governments that human rights are an important part of the equation.

In the future, courts will face an increasing number of environmental cases posing multiple and varied challenges. The fight will continue between companies and civil society. Within this context, governments are responsible to mediate between the two sides. Their responsibility is extremely important as it involves the current lives of millions of people and those of future generations. The good news is that governments do not have to bear the burden of decision-making by themselves; on the contrary, civil society is longing to participate. The bad news is that many governments are highly reticent to public participation and transparency in favor of hiding the truth from the people who are actually paying with their money, living standards, and public health.

CONCLUSION

Mining projects are, by their nature, incompatible with sustainability as exploiting these limited resources will undoubtedly lead to exhaustion. Yet, metals and minerals are essential for modern living, and mining is still the primary method of their extraction. In a contemporary approach, the concept of sustainability explores the relationship among economic development, environmental quality, and social equity.¹⁵⁴ Therefore, given the important potential of mining to revenue and employment in

some developing countries, as well as the non-renewable nature of many mined resources, the efficient exploitation and use of resources for development remains crucial. Including sustainability in the mining equation can only be accomplished by clearly elaborating on a complex policy and strategy for exploitation of resources. As it has in the past, the 2013 Resource Governance Index¹⁵⁵ shows that better governance and corruption control is how extractive countries achieve higher income per capita.

But the success of a mining project should not be achieved at the expense of environmental health, which is the premise for a good living or, sometimes, for a living at all. The irresponsible use of chemicals in the extraction process exposes humans to adverse health effects and may subject the environment to hazardous agents.¹⁵⁶ Rosia Montana's exploitation involves habitat destruction, air and water pollution, deforestation, acid mine drainage, fish kill, and cyanide lakes, thereby posing numerous health risks both for the population in the region and for the natural and built environment.

Romania has valuable gold, silver, and other precious metals in underground deposits. It is also a developing country with many infrastructural needs. However, as the bad governmental managing of the Rosia Montana shows to date, it is not the right moment for Romania to play its golden cards. The succeeding governments have operated under a lack of responsibility, transparency, responsiveness, consensus, as well as a lack of respect toward the right to participation, the right to a healthy environment, and the rule of law. If the Romanian executive would have respected the judiciary in the decisions regarding Rosia Montana and civil society's strongly expressed position on the matter, the situation would not have been so delicate and capable of damaging the state and its people. In other words, if the government would have paid more attention and respect to the principles of good governance and environmental democracy, the situation would not be so daunting for all stakeholders involved.

Other states and their decision-makers should learn from the Romanian government's mistakes and pay more attention to the civil society's right to participation and to a healthy

environment, which is strongly backed by the jurisprudence of many high courts from different parts of the world.

It is positively noteworthy that the international atmosphere around natural resources exploitation is currently changing from an unsupervised dynamic to a more monitored industry with increasing environmental democracy features. Besides the international platforms aiming at increasing the transparency and responsibility of governments and companies in general, the Extractive Industries Transparency Initiative ("EITI"), the Revenue Watch Institute ("RWI"), Open Contracting ("OC"), and Publish What You Pay (PWYP) are a few of the recent monitoring instruments watching over the extractive industry's ongoing business.¹⁵⁷ Their work has been beneficial in terms of bringing together governments, companies, and civil society in order to improve the transparency and the management of contracts surrounding natural resources exploitation.¹⁵⁸

Besides damaging the economic development of resource-rich yet economically poor countries, secrecy in the mining sector has also increased environmental health risks.¹⁵⁹ Environmental health risks are proving to be an even larger destructive evil when the global context is considered. As a result, compliance with the principles of good governance in the decision-making process is also aimed at mitigating the health risks posed by exploitation operations. After all, a human being's right to life and to health stands as the basis for all other rights and the progress of the society. When such matters are at stake, the highest diligence standards should be imposed and carefully monitored for compliance.

With judicial systems from around the world becoming increasingly involved in adjudicating environmental issues, along with the active presence of NGOs and associations aimed at increasing transparency and participation, the future looks brighter. As shown in the Romanian case, however, compliance with judicial decisions and respect for international institutions is ensured only in democratic systems that are functional and driven by good governance. And good governance persists only when its eight core elements are met in the governmental decision-making process.



Endnotes: The Gold War of Romania: Sustainable Development or Irreversible Damage?

¹ See *All About Rosia Montana Mining Project*, SAVE ROSIA MONTANA, <http://rosiamontana.org/en/argumente/all-about-rosia-montana-mining-project> (last visited Mar. 14, 2014) [hereinafter Rosaria Montana Mining Project].

² *Id.*

³ International Cyanide Management Institute, *Environmental and Health Facts*, INTERNATIONAL CYANIDE MANAGEMENT CODE, <http://www.cyanidecode.org/cyanide-facts/environmental-health-effects> (last visited Mar. 5, 2014); The National Terror Alert Response Center, *Facts About Cyanide*, HOMELAND SECURITY NEWS AND INFORMATION, <http://www.nationalterroralert.com/cyanide/> (last visited Mar. 5, 2014).

⁴ Raluca Besliu, Romania's High-Level Political Schizophrenia: How to be Simultaneously Pro- and Against a Project, CNN iReport (Sept. 11, 2013), <http://ireport.cnn.com/docs/DOC-1034626>.

⁵ Grace Wong, *Protests Continue in Bucharest Against Gold Mine Plan in Rosia Montana*, THE GUARDIAN (Sept. 4, 2013), <http://www.theguardian.com/environment/2013/sep/04/protest-rosia-montana-gold-mine-protest>; Steve McGrath, *Romanians Protest in Trafalgar Square Against Cyanide Mining in Rosia Montana*, THE INDEPENDENT (Sept. 29, 2013), <http://www.independent.co.uk/news/uk/home-news/romanians-protest-in-trafalgar-square-against-cyanide-mining-in-rosia-montana-8847614.html>; *Protests Take Place in Romania and Abroad Against Rosia Montana Mining Project*, BUSINESS REVIEW (Sept. 2, 2013), <http://business-review.eu/featured/protests-take-place-in-romania-and-abroad-against-rosia-montana-mining-project/>.

⁶ See generally DAVID V. BATES, ENVIRONMENTAL HEALTH RISKS AND PUBLIC POLICY (1994).

¹⁴⁵ EUR. COMM'N, SPECIAL EUROBAROMETER 341/WAVE 73.1 BIOTECHNOLOGY REPORT 18 (Oct. 2010), available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_341_en.pdf.

¹⁴⁶ *Rules on GMOs in the EU—Ban on GMOs cultivation*, EUR. COMM'N, http://ec.europa.eu/food/food/biotechnology/gmo_ban_cultivation_en.htm; Irina Ivanova, *Bulgaria Parliament Bans GMO Crops to Soothe Fears*, REUTERS (Mar. 18, 2010), <http://www.reuters.com/article/2010/03/18/us-bulgaria-gmo-idUSTRE62H3EJ20100318>; Svetlana Kovalyova, *Italy Regions Push Minister for Official GM Ban*, REUTERS (Sept. 30, 2010), <http://www.reuters.com/article/2010/09/30/italy-gmo-idUSLDE68T1RX20100930>.

¹⁴⁷ Directive 2001/18/EC, *supra* note 138, at art. 23.

¹⁴⁸ THE PEW GLOBAL ATTITUDES PROJECT, VIEWS OF A CHANGING WORLD 90-91 (2003).

¹⁴⁹ Regulation 1829/2003, *supra* note 143, at art. 6.4, L268/8.

¹⁵⁰ *Which EU Countries Ban the Cultivation of GMOs?* EUR. COMM. , http://ec.europa.eu/food/food/biotechnology/qanda/d4_en.htm#d (last visited Mar. 9, 2011).

¹⁵¹ SUGURO SATO, JAPAN BIOTECHNOLOGY ANNUAL REPORT 2008 3 (2008).

¹⁵² GAO, *supra* note 58, at 14.

¹⁵³ U.S. ENV'T'L PROT. AGENCY, *supra* note 34; SATO, *supra* note 151, at 3; GAO *supra* note 58, at 16; *Is USDA Accounting For Costs To Farmers Caused By Contamination From Genetically Engineered Plants? Before the Domestic Policy Subcomm. of the U.S. House Oversight & Gov't Reform Comm.*, 110th Cong. 2 (Mar. 13, 2008). (Statement of Colin A. Carter, Professor, Department of Agricultural and Resource Economics, University of California, Davis).

¹⁵⁴ *Is USDA Accounting For Costs To Farmers Caused By Contamination From Genetically Engineered Plants? Before the Domestic Policy Subcomm. of the U.S. House Oversight & Gov't Reform Comm.*, 110th Cong. 2 (Mar. 13, 2008) (Statement of Todd Leake, Conventional and GE grain grower, Dakota Resource Council).

¹⁵⁵ *Is USDA Accounting For Costs To Farmers Caused By Contamination From Genetically Engineered Plants? Before the Domestic Policy Subcomm. of the U.S. House Oversight & Gov't Reform Comm.*, 110th Cong. 1 (Mar. 13, 2008) (Statement of Harvey Howington, Vice President U.S. Rice Producers Association).

¹⁵⁶ *Id.* at 3.

¹⁵⁷ Sean McConnell, *Animal Feed Containing Illegal GM Maize Impounded*, IRISH TIMES, <http://www.friendsoftheirishenvironment.org/papers-today/13-biodiversity/9772>. Because Ireland has not approved that particular GE trait, it was not allowed into the country.

¹⁵⁸ U.S. TRADE REPRESENTATIVE, 2010 REPORT ON SANITARY AND PHYTOSANITARY MEASURES 20 (2010).

¹⁵⁹ U.S. DEP'T OF STATE, CABLE NO. 07STATE160639 (Nov. 27, 2007); U.S. DEP'T OF STATE, CABLE NO. 08STATE129940, FY 2009 BIOTECHNOLOGY OUTREACH STRATEGY & DEP'T RESOURCES (Dec. 10, 2008); U.S. DEP'T OF STATE, CABLE NO. 09STATE122732, FY 2010 BIOTECHNOLOGY OUTREACH STRATEGY & DEP'T RESOURCES (Dec. 1, 2009).

¹⁶⁰ PEW INITIATIVE, *supra* note 3, at 20-21.

¹⁶¹ GAO, *supra* note 58, at 4.

Endnotes: THE GOLD WAR OF ROMANIA: SUSTAINABLE DEVELOPMENT OR IRREVERSIBLE DAMAGE? *continued from page 34*

⁷ Eric Reguly, *Gabriel Threatens Romania with Billion-Dollar Lawsuit*, THE GLOBE & MAIL (Sept. 11, 2013), <http://www.theglobeandmail.com/report-on-business/international-business/european-business/gabriel-resources-ceo-vows-to-sue-if-romania-kills-europes-biggest-gold-mine/article14240950/>.

⁸ See generally BATES, *supra* note 6.

⁹ The World Fact Book: Romania, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html>; Romania, *Travel and Tourism Information*, <http://www.romaniatourism.com/> [hereinafter *Romania Travel and Tourism Information*].

¹⁰ See generally *Romania Travel and Tourism Information*, *supra* note 9.

¹¹ Council on Foreign Relations, *The Relationship between Democracy and Development: Implications for Policy* (Mar. 19, 2003), <http://www.cfr.org/democratization/relationship-between-democracy-development-implications-policy/p5778>.

¹² Friedmann Mueller & Philip Mueller, *The Essentials of Good Governance*, HARVARD UNIV. BELFER CTR. (Dec. 10, 2012), http://belfercenter.ksg.harvard.edu/publication/2706/essentials_of_good_governance.html.

¹³ *Democracy and Development – The Missing Link*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (Jun. 17, 2008), http://www.idea.int/dem_and_dev_missing_link.cfm.

¹⁴ John Scot, *Democracy is Not Enough*, FOREIGN AFFAIRS, <http://www.foreignaffairs.com/articles/134000/john-scott/democracy-is-not-enough> (last visited Feb. 25, 2014).

¹⁵ Francis N. Botchway, *Good Governance: The Old, The New, The Principles and The Elements*, 13 FLA. J. INT'L L. 159, 161 (2001).

¹⁶ See generally THE WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH (1989), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1999/12/02/000178830_98101901364149/Rendered/PDF/multi0page.pdf.

¹⁷ Presentation by Nayana Renukumar, CENTRE FOR GOOD GOVERNANCE, *Good Governance: Concepts and Components*.

¹⁸ *Id.*

¹⁹ UNITED NATIONS DEVELOPMENT PROGRAMME, GOOD GOVERNANCE AND SUSTAINABLE HUMAN DEVELOPMENT 3 (1994), available at <http://mirror.undp.org/magnet/policy/chapter1.htm>.

²⁰ See United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), *What is Good Governance*, available at <http://www.unescap.org/sites/default/files/good-governance.pdf> (last visited Apr. 25, 2014).

²¹ Kabir Tahir Hamid, *Promoting Good Public Governance and Transparency 2* (Dec. 31, 2008) (unpublished paper prepared for Two-Day

Sensitization Workshop for the Commemoration of the International Day against Corruption), available at http://www.academia.edu/1920609/Promoting_Good_Public_Governance_and_Transparency.

²² *Id.*

²³ *The Rosia Montana Project's Confidential Documents*, SAVE ROSIA MONTANA, available at <http://saverosiamontana.net/2013/10/the-rosia-montana-projects-confidential-documents/> (last visited Mar. 17, 2014) [hereinafter *SAVE ROSIA MONTANA*].

²⁴ *Id.*

²⁵ See generally *id.*

²⁶ Law No. 182/2002 on Protection of Classified Information, Art. 15(b), Apr. 12, 2002, available at <http://www.orniss.ro/ro/182.html>.

²⁷ SAVE ROSIA MONTANA, *supra* note 23.

²⁸ Salvati Rosia Montana, *All about Rosia Montana Mining Project*, <http://rosiamontana.org/en/argumente/all-about-rosia-montana-mining-project> (last visited Mar. 13, 2014).

²⁹ *Id.*

³⁰ BATES, *supra* note 6.

³¹ ANDREW WILSON & DAVID MATINGLY, STATEMENT OF SIGNIFICANCE: ROSIA MONTANA, CARNIC MASSIF (September 2010 with additional summary July 2011), available at <http://users.ox.ac.uk/~corp0057/Raport-Oxford-Rosia-Montana-MD1.pdf>.

³² Raluca Besliu, *Rosia Montana: Alternative Development Paths*, HARVARD INT'L REVIEW (Jan. 14, 2014), available at <http://hir.harvard.edu/blog/visitor/rosia-montana-alternative-development-paths>.

³³ See generally ROBERT E. MORAN, REVIEW OF THE ROSIA MONTANA ENVIRONMENTAL IMPACT ASSESSMENT REPORT WITH A FOCUS ON WATER AND WATER QUALITY-RELATED ISSUES, available at http://www.rosiamontana.ro/img_upload/472936e3bca2bc61045730fbb1869240/2.raport_Moran_final.pdf.

³⁴ Nicolae Stefanuta, *The People vs. Gold: How Legal Action Can Rid Romania of a Bad Deal*, GEORGETOWN PUB. POL'Y REVIEW (Oct. 17, 2013), <http://gppreview.com/2013/10/17/the-people-vs-gold-how-legal-action-can-rid-romania-of-a-bad-deal/>.

³⁵ *Romania's Mineral Resources Agency Denies Extraction Prospects of Other Minerals than Gold, Silver at Rosia Montana*, ROMANIA INSIDER (Sept. 25, 2013), <http://www.romania-insider.com/romanas-mineral-resources-agency-denies-extraction-prospects-of-other-minerals-that-gold-silver-at-rosia-montana/107005/> (describing how Romania's mineral resource agency denies extraction prospects of other minerals at Rosia Montana).

³⁶ Law 85/2003, Art. 1, available at <http://lege5.ro/Gratuit/gq3danjx/legea-minelor-nr-85-2003>.

- ³⁷ Monitorul Oficial no. 646/ 16 July 2004, available at http://upload.wikimedia.org/wikipedia/commons/e/ed/Monitorul_Oficial_al_României_Partea_I_2004-07-16%2C_nr._646.pdf.
- ³⁸ *Place Rosia Montana on the World Heritage List*, CHANGE.ORG, <http://www.change.org/petitions/unesco-place-rosia-montana-on-world-heritage-list-mountains-being-poisoned-with-cyanide> (last visited Mar. 16, 2014) (online petition); See also Besliu, *supra* note 32; Stefanuta, *supra* note 34.
- ³⁹ *Minister Barbu: Rosia Montana Could Get on UNESCO Tentative List in 7-10 Years*, ACTMEDIA.EU, (Aug. 22, 2013), <http://actmedia.eu/daily/minister-barbu-rosia-montana-could-get-on-unesco-tentative-list-in-7-10-years/47724> [hereinafter *Minister Barbu*].
- ⁴⁰ *The Criteria for Selection*, UNITED NATIONS EDUC., SCIENTIFIC & CULTURAL ORG., <http://whc.unesco.org/en/criteria/> (last visited Mar. 16, 2014).
- ⁴¹ *Minister Barbu*, *supra* note 39.
- ⁴² *Protecting the Heritage of Romania through Sustainable Development*, ROSIA MONTANA CULTURAL FOUNDATION, <http://rosia-montana-cultural-foundation.com/> (last visited Mar. 16, 2014).
- ⁴³ See Wong, *supra* note 5.
- ⁴⁴ Romulus Georgescu, *DOCUMENT Raportul Comisiei Roșia Montană. Parlamentarii Laudă Proiectul dar Propun un Cadru Legislativ General*, ACTUALITATE (Nov. 11, 2013), available at <http://www.romanialibera.ro/actualitate/politica/document-raportul-comisiei-rosia-montana-parlamentarii-lauda-proiectul-dar-propun-un-cadru-legislativ-general-317587.html>.
- ⁴⁵ *What is Good Governance?*, UNITED NATIONS EDUC., SCIENTIFIC & SOCIAL COMM'N FOR ASIA & THE PACIFIC (July 10, 2009), <http://www.unescap.org/resources/what-good-governance>.
- ⁴⁶ *Economic Impact of Rosia Montană Project*, ROȘIA MONTANĂ GOLD CORP., <http://en.rmgc.ro/rosia-montana-project/economy/economic-impact.html> (last visited Mar. 10, 2014); see also *Benefits for the Romanian State (at US\$1,200/oz Gold and Assuming a 25% State Share)*, ROȘIA MONTANĂ GOLD CORP., <http://en.rmgc.ro/rosia-montana-project/economy/benefits-for-the-romanian-state.html> (last visited Mar. 10, 2014).
- ⁴⁷ See *id.*
- ⁴⁸ *The Illusion of Jobs*, ROSIAMONTANA.ORG, <http://www.rosiamontana.org/en/argumente/the-illusion-of-jobs> (last visited Mar. 10, 2014).
- ⁴⁹ Raluca Besliu, *The Hypocrisy of the Romanian Government: Why the Rosia Montana Project Must Be Stopped*, POLITICS IN SPIRES (May 29, 2013) <http://politicsinspires.org/the-hypocrisy-of-the-romanian-government-why-the-rosia-montana-project-must-be-stopped> (explaining that after the environmental cleanup costs and the repayment of loans taken out by Minvest from Gabriel Resources, the project would generate nowhere near the \$4 billion claimed by RMGC but instead would bring “nothing to the region but a long term sentence to poverty”).
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² OXFORD POLICY MGMT., *THE ECONOMIC IMPACT OF THE ROSIA MONTANA GOLD PROJECT IN ROMANIA* 84 (Sept. 2009).
- ⁵³ WASSILY LEONTIEFF, *INPUT-OUTPUT ECONOMICS* 19, 67 (2nd ed.1986) (explaining that input-output analysis is a method of quantifying the mutual inter-relationships among the various sectors of a complex economic system, and elaborating further that the magnitude of a given industry depends upon all the input-output relationships among all the sectors of the economy).
- ⁵⁴ Clara Volintiu, *Romania's Efforts in the Fight Against Corruption May Not be Effective If They Increase Mistrust in Political Figures and Institutions*, LSE BLOGS (Jul. 5, 2012), <http://goo.gl/TGB93m>; see also Anca Bernovici, *Foreign Investors Concerned about Romanian Political Unrest*, NINE O'CLOCK (Jul. 9, 2012), <http://goo.gl/ua4o54>, (last visited Mar. 10, 2014).
- ⁵⁵ TOM GALLAGHER, *ROMANIA AND THE EUROPEAN UNION: HOW THE WEAK VANQUISHED THE STRONG* 205 (2009) (explaining that after the FSN [Frontul Salvării Naționale] wrested control of state institutions and won a popular mandate in hastily-called elections, a process of transferring state wealth into private hands went underway).
- ⁵⁶ *Matthew Hart*, <http://www.matthewhart.net/p/blog.html> (last visited Mar. 10, 2014).
- ⁵⁷ MATTHEW HART, *GOLD: A HISTORY, A HUNT, A FEVER*, SIMON & SCHUSTER 14 (2013) (arguing that “this massive spike kicked off an unprecedented global gold-mining and exploration boom, much bigger than the Gold Rush of the 1800s”).
- ⁵⁸ *Id.*
- ⁵⁹ See Lucrina Stefanescu et al., *Integrated Approach of Environmental Impact and Risk Assessment of Rosia Montana Mining Area*, 20 ENVIRON. SCI. POLLUTION RES. 7719, 7720 (2013).
- ⁶⁰ *Technological Processes in S.C. ROȘIA MONTANĂ GOLD CORPORATION S.A.—EIA REPORT*, 10, available at <http://en.rmgc.ro/Content/uploads/technological.pdf> (last visited Mar. 10, 2014) [hereinafter *Technological Processes*].
- ⁶¹ EUR. PARLIAMENT COMM. ON ENV'T, PUB. HEALTH & FOOD SAFETY, *BACKGROUND NOTE ON CYANIDE IN GOLD MINING 1* (Sept. 2013), available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/envi/dv/envi20130925_info-cyanide/_envi20130925_info-cyanide_en.pdf [hereinafter *BACKGROUND NOTE ON CYANIDE IN GOLD MINING*].
- ⁶² *Overview of Mining and its Impacts in* GUIDEBOOK FOR EVALUATING MINING PROJECT EIAs 6, 9, available at <http://www.elaw.org/files/mining-eia-guidebook/Chapter1.pdf> (explaining that tailings, a by-product of metallic ore processing, refers to high-volume waste that can contain harmful quantities of toxic substances, including arsenic, lead, cadmium, chromium, nickel, and cyanide).
- ⁶³ See *Technological Processes*, *supra* note 60, at 75.
- ⁶⁴ *The Rosia Montana Mining Project—Between Risks and Benefits*, ROMANIAN ACADEMY (originally published in Romanian in “Academica” nr. 13-14, April-May 2003, pp. 77-80), available at www.acad.ro/rosia_montana/doc_fin/rm_ih_risk_en.doc (last visited Mar. 10, 2014).
- ⁶⁵ *Cyanide Incidences*, Rainforestinfo.org, <http://www.rainforestinfo.org.au/gold/spills.htm> (last visited Mar. 10, 2014).
- ⁶⁶ See Fabio. Luino & J. V. De Graff, *The Stava Mudflow of 19 July 1985 (Northern Italy): A Disaster that Effective Regulation Might Have Prevented*, NATURAL HAZARDS & EARTH SYSTEM SCI., available at <http://www.nat-hazards-earth-syst-sci.net/12/1029/2012/nhess-12-1029-2012.pdf>, (last visited Mar. 10, 2014).
- ⁶⁷ *The Los Frailes Tailings Dam Failure (Aznalcóllar, Spain)*, Wise Uranium Project (July 12, 2013), <http://www.wise-uranium.org/mdaff.html>.
- ⁶⁸ Julie Hyland, *Cyanide Spill “A Catastrophe of European Dimensions,”* INT'L COMM. OF THE FOURTH INT'L (Feb. 15, 2000) (noting that the cyanide spill in Baia Mare has destroyed wildlife and fish stocks and threatened the water supplies of 2.5 million people in central Eastern Europe.).
- ⁶⁹ EUR. PARLIAMENT COMM. ON ENV'T, PUB. HEALTH & FOOD SAFETY, *supra* note 61.
- ⁷⁰ European Parliament Resolution of 5 May 2010 on a General Ban on the Use of Cyanide Mining Technologies in the European Union, EUR. PARL. DOC. RC-B7-0238/2010, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0145&language=EN> (last visited Mar. 14, 2014).
- ⁷¹ EUR. PARLIAMENT COMM. ON ENV'T, PUB. HEALTH & FOOD SAFETY, *supra* note 61.
- ⁷² EUR. PARLIAMENT COMM. ON ENV'T, PUB. HEALTH & FOOD SAFETY, *supra* note 61.
- ⁷³ Besliu, *supra* note 49.
- ⁷⁴ John Graham et al., *Principles for Good Governance in the 21st Century*, POLICY BRIEF No. 15 3 (2003), available at <http://goo.gl/fHbcOR>.
- ⁷⁵ *Rosia Montana Project—A Test for the Rule of Law in Romania*, SOROS FOUNDATION ROMANIA, <http://www.soros.ro/?q=en/rosia-montana-project-test-rule-law-romania> (last visited Mar. 10, 2014).
- ⁷⁶ *The Romanian Mining State Company, Minvest Deva, Occupied by Anti-Cyanide Goldmining Activists*, SAVE ROȘIA MONTANĂ, <http://rosiamontana.org/en/stiri/the-romanian-mining-state-company-minvest-deva-occupied-by-anti-cyanide-goldmining-activists> (last visited Mar. 10, 2014); see also Albus Maior Facebook Page, www.facebook.com/alburnusmaior?fref=ts, (last visited Mar. 10, 2014); GREENPEACE ROMANIA, <http://www.greenpeace.org/romania/ro/campanii/Toxic/rosiamontana/stiri/rosia-montana-marturii-incomode/> (last visited Mar. 10, 2014); ASOCIATIA SALVATI BUCURESTIUL, www.salvatibucurestiul.ro/.
- ⁷⁷ *Dirty Politics*, HUFFINGTON POST (Oct. 22, 2013), http://www.huffingtonpost.co.uk/stephen-mcgrath/rosia-montana-and-dirty-p_b_4123235.html.
- ⁷⁸ Lucian Lumezeanu, *Iliescu, despre Rosia Montana: Baietii din Piata, Saracii, Nu Stiu Mare Lucru*, ZIARE.COM (Sept. 9, 2013), <http://www.ziare.com/rosia-montana/stiri-rosia-montana/iliescu-despre-rosia-montana-baietii-din-piata-saracii-nu-stiu-mare-lucru-1255979>.
- ⁷⁹ Stephen McGrath, *Rosia Montana and Dirty Politics*, HUFFINGTON POST (Oct. 22, 2013), http://www.huffingtonpost.co.uk/stephen-mcgrath/rosia-montana-and-dirty-p_b_4123235.html.
- ⁸⁰ Catalin Hosu, *Special Commission Recognizes Importance of Mining in Romania*, ROȘIA MONTANĂ NEWS, <http://www.rosiamontananeews.com/special-commission-recognises-importance-of-mining-in-romania/618> (last visited Mar. 10, 2014).

- ⁸¹ *Un Numar de 11 Spoturi de Promovare a Proiectului Rosia Montana, Oprite de la Difuzarea pe TV de CNA*, STIRILE PRO TV (Oct. 15, 2013), <http://goo.gl/VLRbjB>.
- ⁸² *Legally Corrupt: Romanian Politicians Chase “Super-Immunity,”* AL JAZEERA (Jan 18, 2014), <http://www.aljazeera.com/indepth/opinion/2013/12/legally-corrupt-romanian-politicians-chase-super-immunity-2013123183238113962.html>.
- ⁸³ See Reguly, *supra* note 7.
- ⁸⁴ A. SCHEDLER ET AL., THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 14, 22 (1999) (observing that that ‘accountability . . . implies subjecting power to the threat of sanctions; obliging it to be exercised in transparent ways; and forcing it to justify its acts’ and explaining further that the term political accountability covers “activities of . . . politicians, such as cabinet members, legislators, and party leaders”).
- ⁸⁵ DANIEL LEDERMAN ET AL., ACCOUNTABILITY AND CORRUPTION: POLITICAL INSTITUTIONS MATTER 2, 4 (Mar. 2004), [available at http://courses.wcupa.edu/rbove/eco343/040compecon/general%20compar/040300institut.pdf](http://courses.wcupa.edu/rbove/eco343/040compecon/general%20compar/040300institut.pdf).
- ⁸⁶ McGrath, *supra* note 79.
- ⁸⁷ Rosaria Montana Mining Project, *supra* note 1.
- ⁸⁸ LEDERMAN ET AL., *supra* note 85.
- ⁸⁹ McGrath, *supra* note 79.
- ⁹⁰ *The Parliamentary Report Speaks for Sixteen Years of Constant Failures for Gabriel Resources*, SAVE ROSIA MONTANA (Nov. 12, 2013, 9:00 AM), <http://www.rosiamontana.org/en/stiri/the-parliamentary-report-speaks-for-16-years-of-constant-failures-for-gabriel-resources>.
- ⁹¹ Valentina Pop, *EU Still Unhappy with Romania’s Rule of Law*, EU OBSERVER (Jan. 30, 2013, 9:18 AM), <http://euobserver.com/justice/118881>.
- ⁹² *Id.*
- ⁹³ *What is the Rule of Law?*, THE WORLD JUSTICE PROJECT, <http://worldjusticeproject.org/what-rule-law> (last visited Mar. 28, 2014).
- ⁹⁴ L.M. HAROSA, S. SIMION, A. CIUPA & A. CRISTOLOVEANU, ANALYSIS OF THE DRAFT LAW TO PERMIT THE ROSIA MONTANA MINING PROPOSAL, [available at http://www.rosiamontana.org/sites/default/files/Summary-LegalaAalysisLawProposalRosiaMontana%20\(1\).pdf](http://www.rosiamontana.org/sites/default/files/Summary-LegalaAalysisLawProposalRosiaMontana%20(1).pdf).
- ⁹⁵ *Id.*
- ⁹⁶ *Id.*
- ⁹⁷ *Id.*
- ⁹⁸ *Tatar v. Romania*, 61 EUR. CT. H.R. (2009); *Taskin v. Turkey*, 560 EUR. CT. H.R. (2004).
- ⁹⁹ *Id.* at 2.
- ¹⁰⁰ *Id.* (reiterating that the State “had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues.”).
- ¹⁰¹ *Id.*
- ¹⁰² *Id.*
- ¹⁰³ *Id.*
- ¹⁰⁴ *Taskin and Others v. Turkey*, 2004-X EUR. CT. H.R. 179.
- ¹⁰⁵ *Id.*
- ¹⁰⁶ *Id.*
- ¹⁰⁷ *Id.*
- ¹⁰⁸ *Id.* at 186 (holding that “the risk connected with the accumulation of heavy elements or cyanide could persist for twenty to fifty years and was likely to infringe the right of the area’s inhabitants to a healthy environment.”).
- ¹⁰⁹ Law 24/2000 on the Norms of Legislative Technique for Drafting Laws published in the Official Gazette no. 139/03.31.2000 [hereinafter Law 24/2000].
- ¹¹⁰ See L.M. HAROSA, S. SIMION, A. CIUPA & A. CRISTOLOVEANU, CRITICA PROIECTULUI DE LEGE REFERITOR LA EXPLOATAREA MINIERA DE LA ROSIA MONTANA (2013), [available at http://www.rosiamontana.org/sites/default/files/Albur-nus%20Maior%20Analiza%20legii%20RM%202013.pdf](http://www.rosiamontana.org/sites/default/files/Albur-nus%20Maior%20Analiza%20legii%20RM%202013.pdf).
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ Law 33/1994 on Expropriation for Public Utility published in the Official Gazette no. 139/02.06.1994 [hereinafter Law 33/1994].
- ¹¹⁴ Law 255/2010 on Expropriation for Public Utility for National, Regional or Local Objectives published in the Official Gazette no. 853/12.20.2010 [hereinafter Law 255/2010].
- ¹¹⁵ Law 24/2000, *supra* note 109.
- ¹¹⁶ Proiect de Lege Privind Unele Măsurî Aferente Exploatării Minereurilor Auro-Argentifere din Perimetrul, Roşia Montană, <http://www.senat.ro/Legis/Lista.aspx?cod=17535>.
- ¹¹⁷ Law 24/2000, *supra* note 109.
- ¹¹⁸ Law 255/2010, *supra* note 114; see also Law 24/2000, *supra* note 109.
- ¹¹⁹ Law 33/1994, *supra* note 113.
- ¹²⁰ Law 24/2000, *supra* note 109.
- ¹²¹ Law 85/2003 on Mining published in the Official Gazette no. 197/03.27.2003.
- ¹²² Law 24/2000, *supra* note 109.
- ¹²³ Law 24/2000, *supra* note 109.
- ¹²⁴ Law 24/2000, *supra* note 109.
- ¹²⁵ Convention on Environmental Impact Assessment in a Transboundary Context of the United Nations Economic Commission for Europe, art. 5 (Feb. 25, 1991), [available at http://www.unece.org/env/eia/about/eia_text.html](http://www.unece.org/env/eia/about/eia_text.html).
- ¹²⁶ Lege Nr. 349, din 11 noiembrie 2009, MONITORUL OFICIAL Nr. 787 din 18 noiembrie 2009 (Rom.) [hereinafter Lege Nr. 349].
- ¹²⁷ Art. 10, Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, UN ECON. COMM’N FOR EUR. (2003); *Id.*
- ¹²⁸ SAVE ROSIA MONTANA, *supra* note 23.
- ¹²⁹ SAVE ROSIA MONTANA, *supra* note 23.
- ¹³⁰ L.M. HAROSA ET AL., *supra* note 110.
- ¹³¹ LEGE PRIVIND UNELE MASURI AFERENTE EXPLOATARII MINEREURILOR AURO-ARGENTIFERE DIN PERIMETRUL ROSIA MONTANA SI STIMULAREA SI FACILITAREA DEZVOLTARII ACTIVITATILOR MINIERE IN ROMANIA (Law or Measures Related to Gold-Silver Ore Exploitation at Rosia Montana to Stimulate and Facilitate the Development Activities of Mining in Romia) Sept. 3, 2013, [available at http://www.senat.ro/Legis/PDF/2013/13L475FG.pdf](http://www.senat.ro/Legis/PDF/2013/13L475FG.pdf).
- ¹³² *Id.*
- ¹³³ *Environmental Impact Assessment*, EUROPEAN COMM’N, <http://ec.europa.eu/environment/eia/eia-legalcontext.htm> (last visited Mar. 22, 2014) (stating that certain development projects, as listed in Annex 1 are considered as having a significant effect on the environment and require an EIA).
- ¹³⁴ ANTHONY GIDDENS, THE CONSEQUENCES OF MODERNITY 34 (1990).
- ¹³⁵ Susan Hazen, *Environmental Democracy*, OUR PLANET (UN ENVIRONMENT PROGRAMME) (Mar. 1997) (providing that environmental democracy “captures the principle of equal rights for all those in the environment debate—including the public, community groups, advocates, industrial leaders, workers, governments, academics and health care professionals.”).
- ¹³⁶ ZYGMUNT J. B. PLATERS ET AL., ENVIRONMENTAL LAW & POLICY: NATURE, LAW, AND SOCIETY (3d ed. 2004).
- ¹³⁷ Gowling Lafleur Henderson L.L.P., *A Supreme Court of Canada Decision on Project Scoping under the Canadian Environmental Assessment Act (CEAA)*, LEXOLOGY (Mar. 19, 2010), <http://www.lexology.com/library/detail.aspx?g=cde20d5e-8630-4f59-9f0c-f1c8ac169a3b>.
- ¹³⁸ *Adivasi Majdoor Kisan Ekta Sangthan and Others v. Ministry of Environment and Forests*, M.A. No. 36 (National Green Tribunal, 2011) (India) (holding that the Ministry of Environment and Forests had simply ignored the mandatory procedure required under laws and guidelines governing Environmental Impact Assessments, and the environmental clearance was liable to be set aside).
- ¹³⁹ *Id.*
- ¹⁴⁰ Hernan Rodriguez, *Amendment to the Mining Code*, NORTON ROSE FULBRIGHT (Jun. 2011), <http://www.nortonrosefulbright.com/knowledge/publications/59448/amendment-to-the-mining-code>.
- ¹⁴¹ *Id.*
- ¹⁴² Corte Suprema de Justicia de la Nación (CSJN), 24/4/2010, “Vargas, Ricardo Marcelo c. San Juan, Provincia de y Otros s/ daño ambiental,” Fallos (V. 175. XLIII) (Arg.) (detailing when the Province of San Juan sought a guarantee from mining companies that they would remediate any damage caused by the mining prospecting).
- ¹⁴³ *Biosphere Reserve Information: San Guillermo*, UNESCO (Mar. 7, 2011), <http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?mode=all&code=ARG+01>.
- ¹⁴⁴ McGrath, *supra* note 79.
- ¹⁴⁵ *Godavarman Thirumulpad v. Union of India*, (1996) 9 S.C.R. 982 (India) (deciding that a public hearing may be directed to be conducted by an experienced Administrative District Magistrate other than the one who conducted the hearing in question) [hereinafter Godavarman].
- ¹⁴⁶ *Id.*
- ¹⁴⁷ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment, INTER-AM CT. H.R. (ser. C) No. 12.465 at para. 91, (Jun. 27, 2012) (declaring that Ecuador is responsible for the violation of the rights to consultation, to indigenous communal property, and to cultural identity in the terms of the American Convention).
- ¹⁴⁸ *Id.*

¹⁴⁹ Tatar v. Romania, App. No. 67021/01, Eur. Ct. H.R. (Jan. 27, 2009) (detailing when the ECHR held unanimously that there had been a violation of the right to respect for private and family life of the ECHR on account of the authorities' failure to protect the applicants' rights to a healthy and protected environment).

¹⁵⁰ *Id.*

¹⁵¹ Godavarman, *supra* note 145.

¹⁵² Godavarman, *supra* note 145.

¹⁵³ Hernan Rodriguez, *supra* note 140; *See also* CSJN, *supra* note 142.

¹⁵⁴ PETER P. ROGERS ET AL., AN INTRODUCTION TO SUSTAINABLE DEVELOPMENT 42-47 (2008).

¹⁵⁵ REVENUE WATCH INST., THE 2013 RESOURCE GOVERNANCE INDEX 19 (2013), available at http://www.revenuewatch.org/sites/default/files/rgi_2013_Eng.pdf (calling on governments to disclose contracts signed with extractive companies and ensure that regulatory agencies publish timely, comprehensive reports on their operations).

¹⁵⁶ Perspectives Editorial, *Shale Gas Extraction in North Carolina: Research Recommendations and Public Health Implications*, 121 ENVTL. HEALTH PERSPECTIVES 10 (2013), available at <http://ehp.niehs.nih.gov/wp-content/uploads/121/10/ehp.1307402.pdf>.

¹⁵⁷ REVENUE WATCH INSTITUTE, <http://www.revenuewatch.org/issues/projects>; EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, <http://eiti.org/eiti>; OPEN CONTRACTING, <http://www.open-contracting.org/> (explaining that open contracting refers to norms and practices for increased disclosure and participation in public contracting including tendering, performance and completion); PUBLISH WHAT YOU PAY, <http://www.publishwhatyoupay.org/>.

¹⁵⁸ LEVENTE BORZSAK, THE IMPACT OF ENVIRONMENTAL CONCERNS ON THE PUBLIC ENFORCEMENT MECHANISM UNDER EU LAW 158 (2011).

¹⁵⁹ Tony Carnie, *Secrecy Over Environment Information*, THE MERCURY (Apr. 16, 2012), <http://www.iol.co.za/mercury/secrecy-over-environment-information-1.1276235#.UxY-pcuYZMs>.

Endnotes: WHEN BIG OIL COMES TO A SMALL TOWN: THE EXXONMOBIL OIL SPILL IN MAYFLOWER IN CONTEXT

continued from page 36

Amigos, DRMIKEROBI.COM (Apr. 2012), <http://drmikerobi.com/three-amigos-7-minutes—html>.

⁷ *See* Jamail, *supra* note 6.

⁸ The Ocean Portal Team, *Gulf Oil Spill*, SMITHSONIAN NAT'L MUSEUM OF NAT. HIST., <http://ocean.si.edu/gulf-oil-spill> (last visited March 1, 2014) (presenting BP oil spill as a case study for classroom education).

⁹ *Id.*

¹⁰ Mark A. D'Andrea & G. Kesava Reddy, *Health Consequences among Subjects Involved in Gulf Oil Spill Clean-up Activities*, 126 AM. J. OF MED. 966, 966 (2013) (indicating "significantly altered blood profiles, liver enzymes, and somatic symptoms" among oil spill clean-up workers).

¹¹ Margaret Cronin Fisk & Laurel Brubaker Calkins, *BP Proceeds With Medical-Benefits Pact After Appeal Ends*, BLOOMBERG NEWS (Feb. 13, 2014, 10:54 AM), <http://www.bloomberg.com/news/2014-02-12/bp-proceeds-with-medical-benefits-pact-after-appeal-ends.html> (providing updates of medical-benefits portion of BP oil spill settlement).

¹² Deborah Zabarenko, *U.S. to Study Health Impact of BP Oil Spill*, REUTERS, March 1, 2011, available at <http://www.reuters.com/article/2011/03/01/us-oilspill-health-idUSTRE7205TO20110301> (describing \$34 million, ten-year study of 55,000 clean-up workers and volunteers); *see also* *Gulf Long Term Follow-Up Study*, NAT'L INST. OF ENV'TL HEALTH SCI., <https://gulfstudy.nih.gov/en/index.html> (last visited March 1, 2014).

¹³ Tom Young, *The State of the Gulf: BP Oil Spill Beach Pollution Report for Friday, February 28, 2014*, LEGAL EXAMINER (March 1, 2014, 7:50 AM), <http://neworleans.legalexaminer.com/toxic-substances/the-state-of-the-gulf-bp-oil-spill-beach-pollution-report-for-friday-february-28-2014/> (covering daily beach oiling reports issued by the Florida Department of Environmental Protection); Carol Christian, *Study: Tar Balls Found in Gulf Teeming with 'Flesh-eating' Bacteria*, HOUSTON CHRONICLE (Nov. 12, 13, 10:39 AM), <http://www.chron.com/news/houston-texas/houston/article/Study-Tar-balls-found-after-BP-oil-spill-teeming-4977264.php> (reporting on U.S. Centers' of Disease Control and Prevention findings); *see also* Robert H. Weisberg et al., *Did Deepwater Horizon Hydrocarbons Transit to the West Florida Continental Shelf?*, DEEP-SEA RESEARCH PART II: TOPICAL STUDIES IN OCEANOGRAPHY (Feb. 17, 2014), available at <http://dx.doi.org/10.1016/j.dsr2.2014.02.002> (tracking distances covered by Deepwater Horizon hydrocarbons as far as Florida's Sanibel Island).

¹⁴ Benjamin Alexander-Bloch, *Gulf Coast Residents Not Showing Higher Chemical Exposure Post-BP Oil Spill Than Rest of Nation*, TIMES-PICAYUNE (Jan. 28, 2014, 5:21 PM), http://www.nola.com/environment/index.ssf/2014/01/human_health_and_the_bp_deepwa.html (providing an update of National Institute of Environmental Health Sciences study); Kashmira Gander, *Dolphins 'Suffering Miscarriage, Lung Disease, Losing Teeth After BP Oil Spill' Researchers Claim*, INDEPENDENT (Feb. 17, 2014), <http://www.independent.co.uk/news/world/americas/dolphins-suffering-miscarriage-lung-disease-losing-teeth-after-bp-oil-spill-researchers-claim-9134045.html> (presenting findings of National Oceanic and Atmospheric Administration research).

¹⁵ David Hammer, *5th Circuit Deputy Clerk: 'Staff Error' Caused Wrong Ruling on BP's Request to Have Full Court Review Oil Spill Settlement*, WWLTV.COM (Feb. 22, 2014, 11:34 AM), <http://www.wwltv.com/news/>

Three-judge-panel-rejects-BPs-attempt-to-have-2010-settlement-reviewed-246520461.html.

¹⁶ Tom Fowler, *BP's New Tactic in Oil Spill Claims: Go After the 'Special Master.'* WALL ST. J., Jan. 27, 2014, 11:02 AM, <http://blogs.wsj.com/corporate-intelligence/2014/01/27/bps-new-tactic-in-oil-spill-claims-go-after-the-special-master/>.

¹⁷ *Exxon Valdez Oil Spill*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <http://response.restoration.noaa.gov/oil-and-chemical-spills/significant-incidents/exxon-valdez-oil-spill/> (last visited May 16, 2014).

¹⁸ SagibbsVentco, *Mayflower Oil Spill 6 month meeting (Dr Mike Robi prt1)*, YOUTUBE (Sept. 30, 2013), <https://www.youtube.com/watch?v=VlnZcD4QIkq>.

¹⁹ *ExxonMobil Promises to Cover Oil Spill Cleanup Costs in Arkansas*, CNN, (Apr. 3, 2013), <http://www.cnn.com/2013/04/03/us/arkansas-oil-spill/index.html>.

²⁰ Karen Tricot Steward, *What Does the Mayflower Oil Spill Mean For Central Arkansas' Drinking Water?*, UALR PUBLIC RADIO, (April 5, 2013 4:40 PM), <http://ualrpublicradio.org/post/what-does-mayflower-oil-spill-mean-central-arkansas-drinking-water>.

²¹ Pipeline Map, Central North Crude, EXXONMOBIL, http://www.exxonmobil.com/Images/EMPCo/central_north_crude2.pdf (last visited Mar. 1, 2014).

²² *Planned Changes to U.S. Crude Oil Pipeline Infrastructure Should Relieve Cushing Bottleneck*, SMART ENERGY UNIVERSE, <http://smartenergyuniverse.com/conventional-energy/12587-planned-changes-to-u-s-crude-oil-pipeline-infrastructure-should-relieve-cushing-bottleneck> (last visited Mar. 1, 2014) (describing responses to oil transport bottleneck created by recent expansion of U.S. oil production including 96,000 barrel per day capacity of reversed Pegasus Pipeline); *ExxonMobil Pipeline Company Expands Capacity on Its Pegasus Pipeline to Gulf Coast Region*, EXXONMOBIL (Jun. 17, 2009), <http://news.exxonmobil.com/press-release/exxonmobil-pipeline-company-expands-capacity-its-pegasus-pipeline-gulf-coast-region> (detailing 50% increase, or 30,000 more barrels per day, from 858-mile Pegasus Pipeline).

²³ *Financials for ExxonMobil Corp. (XOM)*, WALL ST. J., <http://quotes.wsj.com/XOM/financials> (last visited Mar. 1, 2014) (reporting ExxonMobil's latest earnings, income statements, and balance sheet); Steve Coll, *Gusher*, NEW YORKER, Apr. 9, 2012 at 28, available at http://www.newyorker.com/reporting/2012/04/09/120409fa_fact_coll (describing ExxonMobil as a private empire and detailing its lobbying efforts in Washington, D.C.).

²⁴ American Fact Finder, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml (search "Mayflower city, Arkansas;" then follow "Income" hyperlink) (last visited Mar. 1, 2014) (providing data from 2010 Demographic Profile).

²⁵ *Mayflower Oil Spill: One Year Later*, UNIV. OF ARK. CLINTON SCH. OF PUB. SERV., (March 31, 2014), <http://clintonschoolspeakers.com/content/mayflower-oil-spill-one-year-later>.

²⁶ Sam Eifling, *The Forgotten in Mayflower*, ARK. TIMES (Aug. 8, 2013), <http://www.arktimes.com/arkansas/the-forgotten-mayflower-residents/Content?oid=3007639&showFullText=true> (reporting latest findings of joint investigative project by the Arkansas Times and InsideClimate News funded by \$27,000 crowd-funding campaign); anthropop, *Rod Bryan Plays FBI*