

ries in the world; Mexico, which is part of the geo-cultural area of Mesoamerica, provides a similar case.

The position of indigenous resistance tends to be stronger in those areas in which indigenous territories are also biodiverse. In a similar fashion, the importance of environment or territory, whether as a source of subsistence or a supplier of common goods such as water, is non-negotiable for communities that resist mining activities in their territory.

The right to freely determine the model of development of the indigenous or communitarian territory through referendums is a new theme that fundamentally questions the limits of the power of the state in regards to the property rights of indigenous peoples or of other local groups.

From the point of view of governments, the communitarian referendums conspire against the sovereignty of the state. Federal authorities do not recognize their validity because supposedly these processes are not binding. From the point of view of indigenous peoples, the referendum is a right derived from international law that establishes community participation in decisions affecting the residents. The decision to allow mining is submitted to the consent of those who live in the territory.

These conflicts lead us to predict that the future debate about the rights of indigenous peoples will not only be about prior, free and informed consultation, but will also fundamentally center on who has the power to decide what is in the interest of the communities. This especially makes sense regarding places where the resources are located in the subsoil of indigenous territories, taking into account the environmental value and biodiversity of these lands. In any case, the debate will center on the issue of state power: to what degree can the state—using the argument of sovereignty—decide how the nation's natural resources will be used.

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Mining Companies and Local Communities

Moving from Paternalism to Respect **BY RACHEL DAVIS**

“That’s the shame of it all, because the relationship got off on that type of foot. You make noise, you get in the way, you cause a problem, we give you money; we get what we want, you’ve got what you want, and then once that money runs out, it starts all over again.”

THOSE ARE THE WORDS OF A SENIOR STAFF member in the community relations team at a major mining project in Peru, talking about the cycle of paternalism that the company had become stuck in when engaging with local communities around the operation. The company is not alone in experiencing this negative dynamic: many in the extractive sector in Peru and elsewhere in Latin America, indeed globally, have learned the hard way that “throwing money at problems” when they arise is no way to build sustainable operations. Already leading companies in the sector are moving from a reactive to a proactive approach, based on meaningful engagement with local communities’ concerns and on company-community partnerships, right from the earliest stages of a project’s development.

Many reasons exist for this shift, and in this article I highlight two of them: first, a growing awareness of the costs to extractive companies of getting community engagement wrong; and second, greater clarity at the international level about companies’ responsibilities when it comes to respecting the human rights of local communities.

Of course, communities (at the local, regional and national levels) experience significant costs when mining companies fail to prevent or address the negative impacts that their operations can have on individuals’ health,

livelihoods, safety and a range of other basic aspects of human dignity—that is, on their human rights. But mounting evidence shows that companies themselves can experience significant costs as a result of such negative impacts, and the conflicts that can ensue.

Global research that I conducted, together with my colleague Daniel Franks at the Centre for Social Responsibility in Mining at the University of Queensland, confirms that extractive companies typically fail to identify and aggregate the costs to their own business arising from conflict with local communities around their operations. The research showed that the most frequent costs related to delay or other interruptions to the project schedule—for a world-class mining project, this can run to USD\$20 million per week of delay (in Net Present Value terms). The most often overlooked costs of conflict are typically the significant staff time that then has to be spent on trying to manage the situation—certainly by the community relations team but in serious or entrenched cases, conflict can have real implications for senior management’s time too. Finally, the research found that the greatest costs experienced by extractive companies tend to be those arising from the lost opportunities for expansion or new project acquisition that are increasingly faced by companies with a reputation for poor community relations.

Understanding and tallying up these costs can help support internal arguments by community relations staff within extractive companies for devoting greater resources and attention to effective management of the company’s impacts and meaningful engagement with affected communities.

Quite apart from the growing “business case” for mining companies to get community relations right, another development is contributing to changed company behavior in this area. And that is the recent convergence at the international level upon the responsibility of companies to respect human rights in their own activities and throughout their business relationships. The United Nations Guiding Principles on Business and Human Rights—unanimously endorsed by member states in the UN Human Rights Council in 2011—set out this responsibility clearly. As business goes about “its business,” it needs to act in a way that avoids infringing on the rights of others and also to address negative impacts with which it may be involved.

Companies can meet this responsibility by putting in place appropriate policies and processes for “human rights due diligence” and remediation to help ensure that they are effectively preventing and addressing their negative human rights impacts—on workers, local community members or others that they may impact through their operations, products or services. The Guiding Principles also direct companies to pay attention to international human right standards that apply to particular groups such as indigenous peoples, including the right to free, prior and informed consent.

The Guiding Principles were supported not only by states but also by leading multinational corporations, trade unions, non-governmental organizations, employer and industry associations, socially responsible investors, law firms and national bar associations, and many others who were involved in the 6-year consultation and research process that led to their creation. In addition, the Guiding Principles have been incorporated into the revised OECD Guidelines for Multinational Enterprises and their key elements are reflected in the updated Sustainability Framework and Performance Standards of the International Finance Corporation (IFC), the private sector lending arm of the World Bank. The International Organization for Stan-

dardization (ISO) also recently established a Guidance on Social Responsibility Standard (ISO26000). The UN Guiding Principles were authored by the former Special Representative of the UN Secretary-General, Professor John Ruggie of the Harvard Kennedy School, for whom I worked as a legal advisor.

We now see countries (such as the United Kingdom and United States) issuing national action plans on how they intend to implement the Guiding Principles, and state bodies (like the SBS in Peru—the independent financial sector regulatory agency—or various Export Credit Agencies in OECD states), encouraging or requiring companies to pay greater attention to these issues. All these

A very different relationship is evolving between mining companies and communities.

developments should help contribute to a more level playing field of expectations on business—as well as the prospect of greater respect for the rights of those individuals that companies may affect.

In the mining sector, the International Council on Mining and Metals has developed guidance for mining companies on how to implement effective human rights due diligence processes and grievance mechanisms. Effective operational-level grievance mechanisms that can receive complaints from local communities can be a key means for companies to identify problems early, before they escalate and turn into more serious forms of conflict. Many mining companies have some kind of mechanism in place to receive complaints regarding a project, but these mechanisms often lack legitimacy in the eyes of those who are supposed to use them, are insufficiently integrated into the company’s decision-making processes or are otherwise ineffective. The Guiding Principles outline a set of “effectiveness criteria” to help companies develop mechanisms that can better respond to affected individuals’ needs and concerns.

The Guiding Principles emphasize the importance of meaningful stakeholder engagement by companies, particularly when they are trying to understand their actual and potential impacts (including through information received via grievance mechanisms); develop effective ways to mitigate the risk of negative impacts; track their performance (for example, through joint monitoring efforts that involve local community members); and remediate actual impacts that they have caused or contributed to. There is a growing number of positive examples from major energy projects of company-community dialogue aimed at addressing historical grievances and new issues as they arise. The Corporate Social

Responsibility Initiative at Harvard Kennedy School has captured three of these in a series of videos, told entirely in the voices of the participants of the process, with examples from Peru, the Philippines and Nigeria.

All of this implies a very different kind of relationship between mining companies and local communities—one based on partnership and engagement rather than paternalism. And one that seeks to respect the rights of local communities, leading to more sustainable outcomes for communities and companies alike.

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