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Resource conflicts

Bringing rights to the surface

By Oliver Balch

Despite a chequered past, international norms and political mobilisation point towards a gradual turnaround in the relationship between the mining sector and indigenous peoples

The history of resource extraction is a rich but inglorious one. Indigenous peoples have often found themselves at the heart of this story, and rarely have they been there voluntarily.

Mining is a profitable game, and one through which both investors and governments have traditionally reaped lucrative rewards.

The same cannot be said for those who live on the surface beneath which the extractive companies need to reach. This is especially true for the world's indigenous peoples, who number an estimated 370 million. Often socially marginalised and geographically remote, they are especially vulnerable to the effects of large-scale investment projects.

"It's acknowledged that experience of indigenous communities vis-à-vis extractives has not always been a happy one by any means," says Aidan Davy, director at the International Council for Mining and Metals (ICMM).

Mining impacts

ICMM's own report on indigenous peoples spells out the potential impacts that resource extraction can bring. It does not make for light reading: physical resettlement, destruction of forests and fisheries, social conflicts, risk of diseases such as Aids, uncontrolled immigration, and so forth.

Remarkably for a business-funded group, ICMM takes the bold step of detailing incidents of bad practice in its recent Good Practice Guide.

One example, aptly entitled "The costs of getting it wrong", cites a mining company facing allegations about cyanide use and toxic pollution. Rather than consult with the local indigenous community, it

launched a public relations campaign. The policy backfired, with the government subsequently ordering a three-year moratorium on mining in the area.

Such cases are no secret. An internet search quickly throws up conflicts in almost every corner of the world where indigenous groups and mining collide.

"Indigenous peoples' groups continue to identify social and environmental impacts that show that companies' commitments lack credible and independent performance monitoring," says Abbi Buxton, author of a new discussion paper by the International Institute for Environment and Development.

The paper comes ten years after the introduction of the industry-led Mining, Minerals and Sustainable Development initiative. The situation may not be perfect, the IIED concedes, but big improvements have been made.

Even the harshest critics of the mining industry accept that mining companies are changing their tune with respect to indigenous peoples.

"Over the last five years in particular, there's been a definite change in the industry's awareness and active participation in negotiating its presence in indigenous territories," says Ramsey Hart, programme coordinator for campaign group Mining Watch Canada.

Credit for this change lies in several areas. Change certainly wouldn't have happened had indigenous groups themselves not mobilised politically. Global media attention and pressure from civil society groups more broadly has helped too.

International norms have also played a funda-

What is FPIC?

FPIC is **free, prior** and **informed consent**. It comprises the following essential elements:

- **consent** that is obtained **free** of coercion or manipulation;
- securing such consent **prior** to any authorisation by the government or third parties, and prior to commencement of activities by a company affecting indigenous peoples' lands, territories, and resources; and
- **consent** that is informed by meaningful participation and consultation of indigenous peoples based on the full disclosure of relevant aspects of the proposed project by the company and permit granting authority in a form that is understandable and accessible to indigenous peoples and local communities.

Source: Framework for Responsible Mining

International norms on indigenous peoples

IFC Performance Standards: The Performance Standards of the International Finance Corporation are applicable to all projects supported by IFC and MIGA arms of the World Bank Group. Standard 7 of the revised standards includes the right to free, prior and informed consent in all aspects of project design, implementation and expected outcomes.

ILO 169: Indigenous and Tribal Peoples Convention: Adopted in 1989 and entering into force in 1991, ILO 169 is the major binding international convention concerning indigenous peoples. It recognises the aspirations of indigenous peoples to exercise control over their own institutions, ways of life and economic development. It has been ratified by 22 countries.

UN Declaration on the Rights of Indigenous Peoples: Adopted by the United Nations in 1989, the declaration contains 46 articles. As well as setting out the rights of indigenous peoples to culture, identity, language, employment, health, education and other issues, the document endorses indigenous peoples' right "to remain distinct and to pursue their own visions of economic and social development".

Other codes covering the mining sector that reference indigenous rights include ICMM's Sustainable Development Framework, Framework for Responsible Mining, the Natural Resource Charter and Akwe-Kon Guidelines.

mental role. ILO Convention 169, which came into force two decades ago, kick-started a discussion in policy circles regarding indigenous issues. This dialogue regained attention with the 2007 adoption of the UN Declaration on the Rights of Indigenous Peoples.

Hart observes that, while important in framing public debate, both sets of norms are "hardly in the mainstream of international business community".

The UN's Guiding Principles on Business and Human Rights have done something to correct that, but the real breakthrough came in January 2012 with the introduction of the International Finance Corporation's revised performance standards.

FIPC commitment

The standards include a specific commitment to free, prior and informed consent with respect to extractive projects in indigenous territories. The clause, widely referred to as FPIC, strengthens the IFC's guidance, which previously obliged developers of IFC-funded projects merely to consult.

ICMM's Aidan Davy describes the revised standards as being "at the progressive end of the spectrum". He also points to their multiplier effect. The conditions have been taken up "lock, stock and barrel" by the 77 signatories of the Equator Principles, which cover projects with capital costs of more than \$10m.

The mining industry has been cautious about endorsing FPIC, however. Genuine confusion exists about the IFC's precise definition of FPIC. Consid-



Clarity at planning stage essential

erable debate, for example, surrounds the need to respect traditional, yet potentially exclusionary decision-making processes.

Concerns also centre on government attitudes towards FPIC. Very few host governments have signed it into national law. Committing to FPIC in all projects could therefore place a company at a competitive disadvantage with less scrupulous players.

The prospect of FPIC becoming a de facto veto mechanism for a minority within an indigenous community is also held up by the mining industry as a potential problem.

Most mining companies commit to extensive consultation with indigenous groups, but agree to FPIC only on a case-by-case basis. Those cases where FPIC is applied tend to be in regions where local regulators insist on it.

Greater legislative clarity is therefore required, argues John Samuel, head of social performance at London-based miner Anglo-American.

"To be effective, FPIC needs to be enshrined into national law and the permitting process, which is clearly a decision that has to be made by voters and legislators in the relevant geographies," he says.

Civil society groups have responded predictably, arguing that industry is trying to water down or redefine the notion of "consent".

For indigenous rights groups, the bottom line comes with the ability to say no. Fiona Watson, field and research director for Survival International, says: "If people don't consent to whatever develop-

"If people don't consent to whatever development it is on their land, then companies must respect that"

*Fiona Watson,
Survival
International*



PHOTO: ISTOCKPHOTO.COM

Impacts can pile up

ment it is on their land, then companies must respect that. Otherwise, what is the point of consultation?"

Forward-looking

In reality, however, few large companies relish the prospect of going ahead with a project in the face of fierce opposition by local indigenous groups. The reputational damage, plus the cost in terms of delays and project risk, present major disincentives.

"The more forward-looking companies know that the broad community is going to have to say 'yes' to the project if it's to go ahead," says Daniel Litvin, director of the specialist consultancy Critical Resource.

In a similar fashion, the more progressive wing of the mining industry is conscious that their social licence depends on delivering tangible benefits to indigenous communities.

Again, the industry's track record is not exemplary in this respect. "Indigenous communities want to be beneficiaries of the process of development and that historically just hasn't happened," notes Litvin.

Sharing out the benefits is not as easy as it sounds. The problem with mining is that it is capital intensive, and not labour intensive, says David Logan, co-chair of London-based advisory firm Corporate Citizenship.

"[This] means that the value generated typically goes elsewhere and local people can be in danger of receiving very little of the return," he explains.

While most mining projects now include a revenue-sharing arrangement with indigenous groups, progressive mining companies are looking at ways to help such groups develop their own enterprises.

ICCM's Davy points to a number of "extraordinary success stories" where indigenous individuals have developed independent businesses. Case studies can certainly be found, but these remain the exception rather than the rule.

Complex though economic integration may be, Anglo-American's Samuel insists the will is there among progressive mining companies.

"Even traditional lifestyles cost money, and most indigenous groups welcome good economic opportunities," he says.

"So there's clearly a shared interest in working together, and over the last decade this has become commonplace across the mining industry."

The indigenous experience of mining is still far from perfect. Yet the industry has turned a corner. Protection of indigenous peoples' rights is now a central concern. Working out how to fulfil their wider human and economic rights is the big question mark that lies ahead. ■

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Engaging stakeholders

Legitimate concerns prompt complex negotiations

By Oliver Balch

More mining companies now acknowledge indigenous peoples' concerns. Understanding the precise nature of those concerns is tough, but nothing compared with the difficulty of resolving them

When a mining company seeks to embark on a project in indigenous territories, a clash of cultures is inevitable. That clash need not be violent, however, and neither need it be irreconcilable.

Yet managing your way to a positive outcome demands a deft hand and a patient spirit. Neither attribute is traditionally associated with the mining industry.

"There is such a high level of distrust that even companies with good intentions can struggle to establish a common understanding," says Daniel Litvin, director of the London-based advisory firm Critical Resource.

Often companies get off on the wrong foot. So admits Aidan Davy, director at the business-led International Council for Mining and Metals.

"In the past there's been a headlong rush towards getting to a point of agreement without really understanding the importance of building ... sound relationships early on," he observes.

Competing interests

Such relationships require thorough groundwork. As with any community, indigenous groups represent a mixture of contending views and interests. Land rights can be particularly problematic as historic claims are frequently undocumented and often competing.

The only way for a company to "untangle all this" is to invest in a comprehensive baseline study, says Davy. That takes time and money. Done well, it can kick-start a trust-building exercise as well as gather vital information.

Recent years have seen considerable thinking go

into the next step: the act of engaging the community in formal dialogue and negotiation.

Determining who to engage with is a critical decision that has to be made early on. Kate Kopischke, senior mediator at New York-based dispute resolution specialist Resolve, observes that the issue of illegitimate representation crops up time and again.

She cites the example of a ten-year, \$193m clean-up operation at the Midnite uranium mine in north-eastern Washington State in the US. The company's proposals are vociferously opposed by a local activist, whose opinions are widely publicised.

"She seems to be speaking for the whole tribe when she's out in public," says Kopischke. "But when you speak to the tribal council, they say that she doesn't represent them."

Governance structures and traditional decision-making processes can be "quite complex" in indigenous communities, she adds. They can also be exclusionary, frequently omitting women and young people.

The experience of trying to negotiate with indigenous groups brings these complexities to the forefront, according to Jon Samuel, head of social performance at mining company Anglo American.

"Who needs to give consent, and how can it be demonstrated? For example, is a simple democratic majority of relevant indigenous communities sufficient?" Samuel asks.

While the IFC guidelines stress the importance of respecting traditional decision-making, responsible companies need to ensure inclusivity as well. That can be a tricky balancing act in practice.

Impact benefit agreements form an integral part of that negotiation process

Meaningful consultation

De Beers Canada commits to the following principles in its consultation processes with indigenous peoples:

- **timely:** adequate notice; time to evaluate and respond
- **informative:** sufficient detail and explanation to allow understanding
- **comprehensible:** presented in an understandable manner
- **ongoing:** process acknowledges feedback; reports on how used
- **responsive:** changes based on feedback where relevant/possible

Source: www.debeerscanada.com

Establishing a charitable trust: Newmont

Under the terms of a community partnership agreement, the **Newmont**-owned **Boddington** mine in Western Australia provides financial assistance to the **Gnarla Karla Booja**. The money is disbursed to a charitable trust managed by an indigenous group.

Set up in 2009, the charitable trust is the principal mechanism for managing all the **financial benefits** received from the mine. A relationship committee representing the traditional owners and the mine owners decides how the money is disbursed.

"The agreement's social package targets school retention through **scholarships**, training with assured employment outcomes, and **cultural support**," says said Glen Kelly, chief executive of the Southwest Aboriginal Land and Sea Council, which advised the Gnaala Karla Booja people during negotiations. "In my opinion, this will have a large and more positive impact on the well-being of the Noongar people."

Source: www.newmont.com/asia-pacific

"You need to be fully respectful of traditional decision-making authority, but also find means of impressing on your interlocutors in the indigenous community of having that more inclusive basis for engagement," says Davy.

The issue of how to engage is also contentious. ICMM's good practice guide on indigenous peoples stresses the need to listen, to allow time, and to present information in an open and honest manner.

All these attributes have to be incorporated within an abiding attitude of respect, says Kopischke. That requires companies to avoid pre-empting the result.

"Often what you see is that companies want help for communities to accept a project with the idea that this is a done deal and now they need help to get the community to like it," she observes.

Alternatively, a responsible company may wish to engage in respectful dialogue, only for the host government to override such a policy.

"Companies get caught between a rock and a hard place. They might want to do the right thing, but the government that signs the same concessions may not have the same values," Kopischke says.

The reverse is also true. Few countries have written FPIC (full, prior and informed consent) into their mining codes, which allows companies to ignore the obligation to fully consult and seek consent.

"Many companies take the line that if they have government permission and act within parameters of agreements and national laws, then they'd just go ahead," says Fiona Watson, field and research director at campaign group Survival International.

Should companies choose to insist on full consultation and even consent, it could result in host governments retracting their concession and handing it to a less reputable developer.

Such a scenario could create a "perverse incentive", says Anglo American's Samuel: "Responsible businesses wanting to do the right thing would be penalised."

Of course, it is difficult to know how often companies have walked away from a project due to the withholding of consent. Such cases rarely go

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Massive projects have long term impact

reported.

Rio Tinto is one notable exception, however. The British-Australian mining company agreed not to develop uranium deposits in the Jabiluka area of Australia's Northern Territory after its failure to gain consent from the Mirrar Aborigines.

Cynics argue that the only mining companies that sign up to FPIC are those with operations outside indigenous areas. There may be a dose of truth in that.

Even so, while many in the industry remain publicly cautious about FPIC, most recognise the need in practice to have broad approval from the host community.

Without that, says Litvin, most are now aware that "they are setting themselves up for a project that will probably fail long term."

Co-benefits

Obtaining consent is a negotiated affair. Impact benefit agreements form an integral part of that negotiation process.

"In most situations, the issue is not whether to develop or not to develop [a mine]. The issue is that indigenous communities rightly don't want to develop unless they are beneficiaries," says ICMM's



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a community may have to engage in economic development,” he says.

Those opportunities tend not to occur in the shape of direct employment. Modern mining operations require staff with sophisticated skills. Few indigenous peoples are equipped with these.

“The local skills base is often completely mismatched with the needs of mining,” says Markus Reichardt, managing director at sustainability consultancy PE International in South Africa, and a regular contributor to Ethical Corporation.

Instead, progressive mining companies are looking to train indigenous peoples in entrepreneurial activities. ICCM’s Davy points to a number of “extraordinary success stories” where individuals in indigenous groups have developed independent supply services and other stand-alone enterprises.

This may be true, but the story across the board is not all so upbeat. Indigenous business ventures are invariably tied up in the wider supply chain of the mining operation. When the mine closes, many will “crash and burn”, says Reichardt.

Responsible companies are right to seek the economic empowerment of indigenous communities, and indigenous communities are justified in expecting it.

Yet, delivering on that expectation is not a simply task. Success will almost certainly require co-ordinated action by local government agencies and other support networks.

Good community relations

Because of their cultural heritage, historic land claims and socio-economic vulnerability, managing relationships with indigenous peoples requires special sensitivity.

However, the principles and strategies for achieving this do not actually differ substantively from conventional best practice approaches to community relations.

Anglo American’s Jon Samuel spells out: “Whether a community is indigenous or not isn’t really the main issue. What’s important is treating people in a way that respects their fundamental and universally accepted human rights.”

All companies ideally want supportive relationships with local communities. That’s especially true for mining companies given the long-term capital investment involved in a mining project.

Good community relations are not a “nice to have” for mining companies. The perceived lack of local benefit that foreign mining investment delivers is causing many governments to move towards resource nationalisation.

In this sense, indigenous groups provide the litmus test for the mining industry’s social licence. If they can be seen to prosper, so too will the future of internationally funded mining projects. For the moment, the results of that test remain undecided. ■

Davy. “The skill and challenge ... is finding a path to development where there is genuine mutual development for the indigenous community and the investor.”

The nuts and bolts of benefit agreements generally incorporate classic corporate social investment projects, such as educational and health facilities.

Revenue-sharing provisions are also increasingly factored into negotiated settlements. This generally takes the form of a fixed single payment, a percentage of profits or an equity stake in the project.

Financial disbursement can occur in a variety of ways, from a direct cash payment to the indigenous authority or a third-party intermediary, through to a deposit in an internal company fund or external trust fund (see box).

Providing the tools and opportunities for economic development is another intrinsic part of most agreements, says Chris Cottier, regional manager for community and indigenous affairs at Western Australia Iron Ore, a subsidiary of BHP Billiton.

“In many cases, indigenous communities are close neighbours of mining operations and these operations can represent the only opportunity that

Job creation: BHP Billiton

BHP Billiton Western Australia Iron Ore operates two indigenous economic development programmes as part of its overall **indigenous contracting strategy**. The company currently has **25 contracts** with ten indigenous contractors, representing a revenue stream of **\$120m** per year.

The company also runs an **indigenous business support** programme to provide important advice for indigenous people who are thinking of starting a small business. This advice includes **business planning** and **financial management**. Since launching in February 2011, the scheme has generated more **40** new indigenous businesses and created over **90** jobs.

www.bhpbilliton.com

Indigenous groups provide the litmus test for the mining industry’s social licence



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Civil society

NGOs that know what they want

By Oliver Balch

While indigenous groups and their NGO representatives are increasingly vocal about individual mining projects, they are also active in trying to shape the industry as a whole

High in Guatemala's western highlands, gold is flowing from an open-pit mine. Operated by Canadian mining firm Goldcorp, the project has been opposed by representatives of the local Mayan community.

Along with other local and international activist groups, Oxfam America is calling for operations at the mine to be suspended. The activists have the support of the Inter-American Human Rights Commission, an independent body of the Organisation of American States. And yet the mine continues.

The campaign forms part of Oxfam's Right to Know, Right to Decide programme (see box).

More than three-fifths of the world's poorest people live in countries rich in natural resources. Far too few ever get to have a say on how these resources are exploited, Oxfam and others argue.

Some indigenous groups are fundamentally opposed to any kind of resource extraction. That's by no means a universal view, however.

Many agree with Ramsey Hart, programme coordinator at Mining Watch Canada, that placing a ban on mining is "not realistic" given society's demand for raw materials.

Giving the go-ahead

Central to the arguments of indigenous groups and their representatives is not the fact, but the manner, in which mining projects go ahead.

Pivotal here is the issue of consent. Fiona Watson, field and research director at human rights group Survival International, maintains that her organisation isn't against mining "per se".

"It only asks if the community has been heard and whether consent has been given fairly with all the independent information to hand," she says.

Accurate information is clearly a prerequisite to any fair negotiation, as Oxfam's Right to Know demand indicates. Watson adds to that the recognition of the collective land rights of indigenous groups.

"Without that you simply can't achieve FPIC," she says, in reference to the widely used acronym for free, prior and informed consent, adopted by the International Finance Corporation.

Exactly how to obtain consent is not straightforward. Transparency, honesty, equity and fairness are all cited among the core principles espoused by NGOs.

So too is inclusivity. Get as many interest groups around the table as possible, says Emily Greenspan, extractive industries policy and advocacy adviser at Oxfam America.

Clearly, it is imperative for companies to respect traditional decision-making processes. At the same time, Greenspan insists, marginalised groups should not be overlooked.

"A lot of companies are realising [that] one of the ways to address this challenge of 'who makes the decision?' is to have an inclusive process," says Greenspan.

She also advocates a consultation process that takes in wider interests than merely those facing immediate material impacts. Regional and national indigenous federations, for example, usually have extensive experience and insights into consultation processes.

Indigenous groups have become increasingly sophisticated and aggressive in pursuing their claims through the courts

“Consultation is a critical element of FPIC,” says Survival International’s Watson. “But in the end, it’s important that communities have the right to withhold their consent. If it’s just consultation then you lose that power.”

Should an indigenous community agree in principle to an extraction project, then the debate shifts to the terms on which that project might go ahead. Naturally, indigenous groups insist that they derive socio-economic benefits.

Alongside typical corporate social investments, such as education and health infrastructure, most mutual benefit agreements now include demands for revenue-sharing as well.

Industry ecosystem

While civil society groups have played a critical role at the level of individual projects, they have also set their sights on shaping the industry as a whole.

That starts with the norms that govern mining companies. In general, NGOs warmly welcomed the introduction of FPIC by the International Finance Corporation in January 2012.

Yet the fact that only 20 governments have so far recognised FPIC makes it easy for companies to “pay lip service”, according to Chris Albin-Lackey, senior researcher at Human Rights Watch.

“There’s a large gap between these aspirational documents and practice,” he argues.

The primary problem is not a lack of laws. The Philippines has a very progressive mining code, Albin-Lackey notes, yet abuses against indigenous rights abound.

Author of a new report on the mining industry in India, Albin-Lackey points to the ability of mining company Vedanta to “steam roll” through a mining project in Orissa despite local opposition.

In this specific case, the government is complicit; it’s the main investor in the controversial mine. In other cases, disputed projects get the go-ahead because of bad governance as much as government corruption.

Turning to India, Albin-Lackey says: “There are only a couple of dozen officials to monitor more than 26,000 mines across the whole country.” Other developing world markets are similarly under-resourced.

Sridar Ramamurthi, chair of the campaign coalition Mines, Minerals and People, agrees with the poor governance argument. “There is such a multiplicity of laws ... From an indigenous perspective, the system just became too cumbersome to deal with.”

The tension between good laws and their poor execution is also echoed by Ramesh Gopalakrishnan, researcher with Amnesty International and author of the 2010 report *Don’t Mine Us Out of Existence*.

India’s Forest Act has special provision to protect the land rights of indigenous communities,



Indian villagers have to object in advance

Gopalakrishnan points out. “The problem is they have to file their claims before the same authorities who are alienating their lands in favour of the companies, so really they can’t get any justice.”

Despite the uphill struggle in achieving legal redress, indigenous groups have become increasingly sophisticated and aggressive in pursuing their claims through the courts.

Mining companies across the world are finding themselves bound up in litigation. US oil company Chevron provides an emblematic case. In 1994, a coalition of indigenous groups in the Ecuadorian Amazon filed a lawsuit for alleged environmental pollution. Nearly two decades later, the oil major was eventually ordered to pay \$18bn in compensation.

There are other successful cases. In May 2012, Colombia’s constitutional court upheld a 2009 decision to suspend the Mande Norte mining project in Afro-Colombian and indigenous territories of northern Colombia. The decision rested on the failure of the developer, Muriel Mining, to properly consult the local population.

Such successes are the exception, however. Human rights activists such as Gopalakrishnan are consequently cautious about taking the litigation

Right to Know, Right to Decide

Oxfam America’s **Right to Know, Right to Decide** campaign challenges international extractive companies to respect a community’s right to decide if or how they want resource-led development to take place in their community, and their right to know about the impacts and benefits of these projects.

A community’s right to know: Companies must provide complete and timely information about how their work affects communities – environmentally, socially, and economically. They must also disclose how much they are paying governments for natural resources so that poor communities get a fair share of the profits.

A community’s right to decide: Companies must obtain the free, prior, and informed consent (FPIC) of communities affected by extractive operations. For indigenous people in particular, respect for FPIC is a critical means of protecting sacred lands and cultural identity.

Genuinely responsible mining companies also have a role to play in pushing for better governance with respect to human rights

Priority areas for best practice

ICMM, the industry body for the mining sector, recently issued a guide indicating **best practice** in managing relations with indigenous communities. ICMM concedes that there is no one-size-fits-all template “given the rich diversity of indigenous peoples”. However, the guide highlights the need for responsible practice in various critical areas.

- **Engagement:** indigenous peoples must be fully involved in the decision-making process regarding potential extractive projects.
- **Groundwork:** companies need to develop appropriate approaches to deal with actual and anticipated impacts of a project, and to determine how any potentially negative impact can be mitigated.
- **Agreements:** consideration must be given to how relations with indigenous peoples are governed. This includes the establishment of preliminary agreements. These can serve as “stepping stones” to putting in place a long-term agreement that may encompass all of a mining project sequence.
- **Impacts and benefits:** the responsibility to mitigate the impacts of mining operations must cover issues such as the preservation of local culture sites and traditions, as well as sharing the benefits arising from a mining project. This latter obligation involves creating opportunities for local economic development.
- **Grievances:** companies need suitable strategies and mechanisms for dealing with community issues and concerns about a mining project or their relationship with the company.

Source: ICMM's Good Practice Guide: indigenous peoples and mining



Proper engagement means respect and involvement

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route. Not only can court cases become unwieldy and protracted, but they invariably favour those with deep pockets and time to play with: namely, companies.

Gopalakrishnan wants to see the focus shift to those financing mining projects. He says: “We need greater awareness on the part of investors that the money they are putting in should not be violating human rights.”

David Shirley, director at responsible business consultancy Corporate Integrity, believes this is beginning to happen. Investors are becoming increasingly sensitive to social risks associated with mining projects, he says. “And indigenous rights are a big part of that.”

He points to a “ramping up” of internal stakeholder management and risk assessment processes as evidence of companies listening to investor concerns.

Closer to companies’ minds, perhaps, is reputational pressure. The indigenous rights movement is nothing if not media savvy. Groups such as Amazon Watch and Cultural Survival have led the way in using communications technology to grab international press attention.

Role for responsible companies

Unwelcome though NGO campaigns are, a spokesman for a large mining multinational suggests campaign groups would be better redirecting their energies elsewhere.

Neither the UN Declaration on Indigenous Rights nor the IFC’s Performance Standards are binding on sovereign states. Lobbying national legislators to write FPIC into national laws would, the industry insider argues, oblige companies to follow suit.

Indeed, some large mining companies say they would welcome greater clarity from host governments with respect to FPIC. “As a developer, we can’t introduce projects without clear rules,” the spokesman says.

Arguably, genuinely responsible mining companies also have a role to play in pushing for better governance with respect to human rights, especially those relating to vulnerable indigenous groups.

There is evidence that legislators are willing to listen. In early 2012, for example, the Panamanian government re-established its mineral resource mining code. The code contains provisions to ensure local communities benefit from mining profits.

The new legislation also saw the cessation of concessions in Panama’s indigenous Ngöbe-Bugle territories. The move did not emerge from a vacuum. It took a week of violent protests, and extensive negotiations with government, for the law to pass.

All too often, the defence of indigenous rights comes only in the wake of vocal protest. That need not be the case. Early and honest engagement by companies can mitigate this threat of social conflict. And that is surely in the interest of industry and indigenous people alike. ■

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