



# Sustainable Mining: Unearthing human rights challenges and opportunities

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## Introduction

Oxfam Australia and the Melbourne Business School (Asia Pacific Social Impact Leadership Centre and Mt Eliza Executive Education) partnered in April 2010 to host a mining symposium on the human rights challenges and opportunities in the extractives sector.

The symposium provided information and stimulated discussion on responsible business policy and practice of Australian mining companies, and the financial institutions that support their international operations.

Selected participants included industry representatives from large and junior mining companies, financial institutions and investors, legal advisors, academia and government.

The symposium commenced with a situational analysis by both Oxfam Australia and the Melbourne Business School which clearly identified the value of innovative, creative, multi-disciplinary partnerships to address global business and sustainable development challenges.

Further, the event was an opportunity to explain Oxfam Australia's work for the coming period on mining with its emphasis on:

- Political engagement – lobbying for a strengthened regulatory environment that upholds the state duty to protect

human rights, including against harm by non-state actors such as transnational enterprises

- Private sector engagement – a critically collaborative approach to working with the extractive sector, and financial institutions that support them, to influence their policy and practice to respect human rights and to mitigate/remedy poor practice
- Support for mine affected communities - through capacity building in corporate accountability advocacy, global governance mechanisms, and company community negotiation and relations.

This symposium was the first in a planned series of practically oriented forums to progress thinking and practice in mining governance and the emerging global issues that impact on sustainable extractives development and social justice.

## Situational Context

Private sector investment is an important driver of economic growth and poverty reduction, provided appropriate regulations and governance systems are in place. However, without adherence to human rights standards, mining can cause loss of land and livelihoods, degradation of land and waterways, and

increased violence and conflict. The most marginalised members of communities – such as women, children and Indigenous Peoples – tend to both be excluded from the economic benefits of mining, and tend to bear the brunt of any negative social and environmental impacts.

Australian mining companies operating overseas face significant challenges in relation to human rights, especially those that operate in conflict and post –conflict zones, and where governance is weak. With so many Australian companies operating in the countries of Africa, and throughout the Asia-pacific region, a rights-based approach to managing business decisions and practice is necessary.

Those companies with robust human rights policies, active and early dialogue and negotiation with affected communities, and site-based grievance mechanisms that are accessible, predictable, equitable, legitimate, transparent and rights-compatible are well placed to manage and mitigate risk, improve their competitive advantage and foster investor confidence.

None-the-less, as participants at the Oxfam Australia mining symposium discussed, the best intentions of companies to improve corporate community relations do not always play out at a site level. Numerous factors

can influence day-to-day operations including:

- Individuals tasked with engineering and technical jobs and site management are not always well placed to manage social challenges, community concerns and mediation
- Host governments can provide assurance of community consent that does not reflect community views
- Assurances of resource benefit-sharing by host governments do not always result in improved services and facilities for communities, particularly in weak regulatory environments
- Understanding the rights of Indigenous Peoples and their unique connection to the land in a spiritual and cultural context is not always an 'easy fit' with the scale, size and impact of mining operations ; and
- Communities, and their representatives, do not always collectively agree on the conditions and benefits of a project, particularly where resettlement and compensation are concerned.

These issues, and many others, can contribute to grievances which left unresolved can escalate into violence, large scale conflict, damage to assets, and disruption to operations. Establishing good corporate community relations, formalised mechanisms for dialogue and negotiation, and local-level grievance mechanisms can alleviate these risks.

Symposium participants heard that applying a human rights lens to business operations is beneficial. However, comments and discussion suggested that the day-to-day challenges faced, including company-community grievances, are not always recognised as, or responded to, as a human rights issue.

Managing company - community relations resonated as a critical issue for participants. However other emerging issues and challenges were identified by speakers and participants, including:

- Greater revenue transparency and disclosure of all payments to governments on a country-by-country basis
- Doing business in conflict, post-conflict and weak governance zones

- Indigenous Peoples and Free Prior and Informed Consent
- Access to finance and investor support
- The proliferation of global corporate accountability tools and policy

## Getting it right: Making corporate community relations work

The key note speaker described what is required of mining companies to 'get it right' and make corporate-community relationships work. Despite the best efforts of companies, things can go wrong and when they do, tend to go wrong in predictable ways. Company-community conflict is both predictable and preventable. Things go wrong when company approaches unintentionally reward obstructive behavior or when community efforts are not strategic and lack rigor. Companies cannot control external factors but can control their reaction to these factors.

The Symposium participants heard about the key elements of getting it right: how a company manages

1. benefits distribution
2. company staff behaviour
3. unintended side effects

In each case, companies need to be careful about the assumptions on which these issues are managed. For example, what might be considered a 'fair' way to distribute benefits and allocate salaries by the company may not be considered fair by local communities. In order to get it right, companies need to ensure that they take responsibility for the side effects of their activities (i.e. take broad responsibility), behave in way that is respectful of local people and operate transparently. It was also emphasised that perceptions are important – hence companies need to behave in a way that is, and is perceived as, caring and respectful, and transparent.

The participants heard how social performance is the sum of company principles, systems, tools and staff capacities. The tools that companies can use to 'get it right' includes having an effective grievance mechanism, an ongoing engagement strategy and local hiring policy. The important role of each

of these tools was emphasised by many speakers throughout the Symposium. The need to establish effective grievance mechanisms for example, is critical because conflict is an accumulation of small events. Another point reiterated by other speakers, was recognition that investing in social investment programs alone will not mitigate risk for the company as the negative impacts of mining operations cannot be offset. Social investment projects (eg. schools and clinics) are not a substitute for community engagement. Furthermore, the first thing that companies should ask of local communities is how the company can be a good neighbour. The importance of building a robust and balanced stakeholder engagement mechanism was strongly emphasised.

During the discussion that followed, panellists emphasised the importance of listening to local people in order to properly understand their concerns and interests. Companies need to collaborate with local communities to solve mutual problems by seeking mutually acceptable solutions. It was generally agreed that knowledge is important for sustainable development and therefore business success – companies must invest in gaining knowledge about the potential unintended consequences of their operations.

## Operational lessons from conflict and weak governance zones

The experiences of large and small companies operating in conflict and weak governance zones were shared among Symposium participants. Human rights issues highlighted at the Symposium include risks related to employment, security, resettlement, environmental management, legacy issues and operating in conflict zones. It was acknowledged that these can be compounded by cultural issues, the competence of early project team members and performance of partners. Risk mitigation measures employed by one large mining company includes having clear and externally communicated commitments to human rights (including to the Universal Declaration of Human Rights and the Voluntary Principles of Security and Human Rights) and internal requirements

(such as having a code of business conduct, and investing in staff education and training). The importance of early and extensive stakeholder engagement was emphasised. An important lesson in 'getting it right' was shared – investing in community development program is important but should not be confused with other measures designed to reduce human rights risks.

The practice of a smaller company provided a contrast to the practice of the large company. The key point made was that small companies can also achieve best practice – in this case, evidenced being the only mining company granted Social Accountability SA8000 Certification. The decision to pursue SA8000 Certification was a deliberate attempt to demonstrate that the company was genuine in its attempts to do the right thing. What was of even more interest was how this was achieved. Participants heard that a top down and bottom up approach was needed, and linked to this the positive impact that company culture can have on company practice and performance. Genuine engagement with local people is important and helped this company identify those issues that are important for the community. A key success has been the high percentage of local people employed – which has obvious benefits – but that requires significant investment in training staff so the expatriate staff could be quickly replaced by local people.

Participants heard about potential risks that companies may face if they do not understand the potential human rights implications of operating in a conflict zone. These risks can include reputation, financing, insurance, divestment and litigation risks. Companies need to be careful to avoid being complicit in human rights violations, and should be aware of bribery and corruptions risks. Strategies to reduce these risks include ensuring a coordinated internal stakeholder approach, developing grievance procedures to deal with low-level grievances, revenue transparency, and conducting due diligence on potential partners – including joint venture partners, host governments and civil society.

This session concluded with a discussion on the role of the Australian Government – it was generally agreed that the

Government has a role to play and can inform companies of the risks they face and in promoting sustainable and rights-compatible mining practice.

## Human rights guidance in extractives

The Symposium introduced the UN "Protect, Respect and Remedy" Framework developed by Prof. John Ruggie, the UN Secretary General's Special Representative on Business and Human Rights. The framework places requirements on states and businesses to ensure that business activities protect and respect human rights. Of particular interest was the 'corporate responsibility to respect' which means that companies must act with due diligence to ensure that they do no harm – this includes requirements for companies to have a human rights policy, undertake human rights impact assessments, and establish company-based grievance mechanisms. This is the baseline expectation of companies.

The participants also heard that the social and human rights performance of companies does affect share price, and that investors are increasingly considering economic, social and governance issues when making investment decisions. Many investors are leading by example with one of Australia's largest investors becoming an Extractive Industries Transparency Initiative supporting company. By doing so, a strong signal is sent to stakeholders and the market that transparency is important. During the discussion, some participants expressed their frustration that investors do not reward good performers – instead it was emphasised that economic, social and governance issues matter most when things go wrong and therefore the challenge for companies is to avoid this.

The Symposium participants heard about voluntary initiatives for improving business practice with regards to human rights. One example is the 'OECD Guidelines for Multinational Enterprises' which governments, including the Australian Government, sign on to. These guidelines set minimum requirements for business conduct overseas including in relation to human rights, disclosure and combating bribery – all of which are critical issues

for the mining industry. Companies were encouraged to use the Guidelines to identify gaps in their own policy and practices. These Guidelines contain a grievance mechanism – this means communities (or NGOs acting on their behalf) who believe that a company has breached the Guidelines can bring this to the attention of the Government where the company is headquartered. A large number of complaints brought against the Guidelines relate to the extractives sector.

## The role of reporting and assurance in responding to human rights challenges and opportunities

Sustainability reporting and assurance is one tool that can assist companies build credibility and trust with stakeholders on human rights issues. Such an approach puts stakeholder engagement at the heart of public disclosure by disclosing issues stakeholders identify as material, the company's methods of engagement and how the company is responding to issues raised. This approach drives continuous improvement in sustainability reporting and stakeholder engagement, recognising that as company operations evolve, so do its impacts and the stakeholders who can affect, and are affected by, its operations. Whilst not discussed, principles for such an approach are set out in the Global Reporting Initiative and AccountAbility AA1000 standards.

Putting human rights information in the public domain sends a very strong signal to all company staff that human rights is an issue of fundamental concern to the company. In doing so it can drive increased employee engagement on the issue and assist in delivering on human rights priorities. Despite the high cost of assurance, some participants explained that their Boards demanded this as it provides the best guarantee that sustainability reports are based on fact. Sustainability reports without independent assurance were also noted as lacking credibility with investors. Increasingly businesses are demanding assurance from other businesses in their supply chains.

It was emphasised that reporting and assurance do not replace the other elements of 'getting it right' but they can be complementary. For example, transparency is important to help understand who receives the benefits – royalties, taxes, jobs – from mining projects. Transparency can also help deflect criticism to where the problems may really lie – for example, a Government that does not spend mining revenue on services demanded by its citizens and expected by the company. Revenue transparency can also help mitigate the risk of bribery and corruption.

## Key elements of effective grievance mechanisms

This session followed the keynote address on company-community relationships, with an emphasis on how to establish effective grievance mechanisms. The value of formalising dispute resolution processes at site level, and then embedding these mechanisms and data collection into mainstream management practices was emphasised. Participants heard that while many companies have a robust process for registering complaints, they lack a comprehensive and consistent process for resolving them.

The experiences of a large mining company were discussed in some detail. Of particular interest was commentary on how complaints can 'spike' when a grievance process is introduced, but then should 'level-off', or reduce, if resolution occurs in a timely, predictable and equitable manner. This led to discussion on the guiding principles promoted by the UN Special Representative on Business and Human Rights, and what is required to develop a credible and effective grievance mechanism. It was suggested that mechanisms must be legitimate, accessible, predictable, equitable, rights-compatible and transparent.

A number of participants shared the challenges they face, particularly with regard to managing diverse community requests and grievances. There is rarely universal agreement among communities regarding a grievance, and trying to determine how far (both geographically and individually) company responsibility should extend with regard to benefit

sharing and handling of complaints is complex. This was noted as an additional challenge for companies faced with legacy grievances. It was suggested the best response is to just accept the legacy issues and try and resolve them as quickly and effectively as possible.

The discussion also raised the issue of company responsibility to respect human rights and uphold responsible business conduct throughout the supply chain. Handling of grievances among suppliers was noted as particularly challenging, as was the cost and time that could potentially be spent on due diligence of suppliers. It was suggested that having consolidated, long-term, stable supplier relationships can reduce the transaction costs and contribute to trusting business relationships. The session concluded with some discussion on the nature of grievances that can arise in response to the complexity of large scale projects that involve developers, financiers and national, provincial and local governments – particularly when cross-border aspects exist.

## Gender and mining: Gender impact assessments

The participants heard how mining can have gendered impacts – women tend to suffer the negative consequences more so than men and often miss out on the potential benefits. The reason for this is that women are not always consulted with by companies, are not invited to join community-company negotiations and are excluded from decision-making processes. While it may be true that many traditional decision-making processes prioritise the participation of men, it is also true that mining companies can be blind to issues of gender and to women. One means to ensure that women's interests and concerns are addressed is for companies to undertake a Gender Impact Assessment – Oxfam Australia recently published a 'how to' guide to assist companies do this.

The participants then heard from one mining company about its attempts to understand and respond to the interests and concerns of women from the communities where it works – the gendered impacts of mining are well

understood by some in this company. By paying greater attention to gender in its communities work, the company believes it can achieve a social licence to operate, improve the quality of life of women and men in affected communities and increase local employment opportunities and skills. The company's focus on gender is not only about addressing equity and equality, but also about how it conducts its business successfully. To achieve this, the company had to develop sound policies and strategies that will make a difference to women's lives – it has also developed its own guide to integrating gender considerations into its communities work.

During the discussion, the importance of company policies and procedures, and company culture were debated. It was generally agreed that having a good gender policy will not result in positive changes for women in the community or workforce unless these policies are supported by a culture that genuinely values women and their needs and interests. The need for gender sensitisation was emphasised including in relation to employment issues.

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