

Case Study : Engagement with Communities in Mining Projects

This case study on good practices for engaging with communities affected by mining projects was developed by the Cyrus R. Vance Center for International Justice's Business and Human Rights Initiative. By examining a mining company's strategy for engaging with local communities, this case study aims to provide companies, academics and other practitioners in the field with a case that displays the importance of having a due diligence process and grievance mechanism in place. Good practices and lessons learned are also included, in order to address and mitigate human rights challenges in corporate engagement with local communities.

I. A Brief Description of the Project and the Company

A mining company with 20 years of experience in Latin-America, particularly in Perú, Bolivia, Argentina and Chile, has an ongoing project in Colombia. The project has a valid environmental license to engage in mining, as required by Colombian legislation.

In line with relevant international treaties¹ ratified by the country, as well as the Colombian Constitution², a company must conduct a consultation process with Indigenous and Afro descendent communities living in areas that may be impacted by the company's mining activities. Although the project site is not owned by Indigenous people, these communities have felt the repercussions of mining operations, as they own land adjacent to the mining site.

II. Impact Assessment and Stakeholder Engagement

In the consultation conducted as part of the impact assessment, the community agreed to the mining project but on certain conditions. One such condition was the protection of the river. The river is part of the ancestral heritage of the community and they perform many rituals on the site. It is also the main source of water for the community.

The findings of the consultations, as well as the community's conditions were included in the final document that allowed the company to obtain the required environmental license from the Colombian authorities.

In line with the United Nations Guiding Principles on Business and Human Rights, and as part of their human rights due diligence process, the company undertook further consultations, which concluded the following:

- Water supply: The river was a major concern for the community, given its traditional significance and its importance as the main source of water for the community's basic needs. As a result, the community requested that the river remain untouched.
- Water and soil contamination: The community was further concerned with the possibility of contamination of the water and soil as a result of the mining activities.
- Job creation: The community inquired as to whether the mining project would create jobs for its members and what the conditions of employment would be.

¹ Convention 169 of the International Labour Organization ratified by Law 21 of 1991.

² Articles 2, 7, 40, 330 of the Colombian Constitution.

The company took steps to address each of the community's concerns. It set up a number of measures to prevent the community from being disrupted and to protect it from contamination resulting from the mining activity. In addition, it provided a full list of the jobs that it would offer community members and, together with community leaders, set the eligibility criteria for these jobs. The company also set up a grievance mechanism, as part of its implementation of the UN Guiding Principles on Business and Human Rights, in consultation with community leaders. The mechanism was then explained to the whole community. The grievance mechanism included the following features:

- The community can elect representatives that are familiar with the social department at the company as well as with issues regarding the community, specifically the needs and possible impacts generated by the project. The social department is responsible for communication with the company, the Government, and the community.
- Community representatives can submit complaints to the company's social department.
- Representatives should reflect the diversity within the community (including most vulnerable members such as minorities, women and children, etc.).
- As soon as the social department receives a complaint, orally or in writing, it must prepare a detailed summary. At this stage, the social department must inform the representative that the company will carry out an investigation and provide a response within fifteen business days.
- The complaint will then be transferred to the department that may have been responsible for the situation (i.e. the department of construction).
- The responsible department must conduct an investigation to establish whether it is indeed responsible for the situation. The investigation must be completed in ten business days.
- If the investigation reveals that the department in question is indeed responsible, it must inform the social department.
- The social department will then draft a proposal for remediation, which will be presented to the board. In drafting the remediation proposal, the social department must take into account the specific needs of the community, as well as the conditions agreed upon during the consultation process.
- After the remediation proposal has been voted on by the board, the social department will present it to the community. The community may make counteroffers (if applicable).

III. The Company's Response

In response to the community's complaint, the company used the aforementioned grievance mechanism to address the reduction of the river's water supply. First, it halted the construction and redirected the river to its natural course. It also supplied drinking water to the community and paid a lump-sum payment to community leaders, which was to be invested for the benefit of the community.

Once these remedial measures were put in place, the company conducted further investigations to see if there were other ways its activity could negatively affect the river and the community. It also committed to constantly review its original human rights due diligence, in order to ensure that lessons learned, such as the ones from this incident, are incorporated in the human rights due diligence, and to ensure that proper mechanisms are in place to prevent such an incident from happening in the future. The review particularly sought to identify changes that needed to be made to the previously-identified human rights risks and to identify other communities that may need to be included in the company's human rights policy.

IV. Good Practices and Lessons Learned

It is important for a company to identify the potential human rights impact of its work and it is equally important that it develops a healthy relationship with the local community and that community members feel heard and integrated at every step. Such a relationship will facilitate collaboration between the company and the community towards a win-win solution should the project have any negative impact on the community.

In this case, there are several lessons learned from the company's engagement with the community and the way it responded to the incident. These include:

1. The human rights due diligence process can provide an important framework through which a company can continually assess the potential human rights impacts of a project. The human rights due diligence process allows for smooth resolution of potential issues with the input and participation of key stakeholders. The company needs to disseminate its human rights due diligence process to all involved.
2. Having a grievance mechanism that is clearly defined and accessible to all stakeholders brings not only a level of transparency to the company's operations, but also contributes to the positive resolution of any potential issues.
3. The grievance mechanism allows the company to learn more about the needs of the community and provides a clear roadmap for follow up every time a decision or action is taken. Furthermore, it allows the company to learn more about the needs of the community and makes communication more effective which can improve the relationship between the company and the community.
4. The existence of a grievance mechanism made it possible to find a successful resolution to the incident. The fact that the incident happened even though the company had in place a risk management process designed to avoid adverse human rights impacts, demonstrates the importance of effective and transparent communication (through both internal and external) channels.
5. Human rights due diligence is a process that requires regular updating throughout the life of the project. This helps the company to assess and adapt its human rights policy and grievance mechanism as circumstances change or new risks arise. It also serves to prevent such incidents from happening in the first place.