

Perspectives in Rights: *The Extractive Industry, International Advocacy, and Communities*

Abstract:

This report is structured to provide ProDESC with a comprehensive understanding of the implications of a rights based discourse regarding multiple conceptions of rights relevant to mining communities. We compare the discourse of rights from the perspectives of the transnational extractive industry and the international rights advocacy groups, while paying particular attention to the wide variety of interpretations of rights and their implications on the ground. The report concludes with concrete recommendations and a synthesis of the inter-functionalities and relationships between the varying conceptions of rights, companies, and communities.

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Introduction: *Mining and Communities*

The contracting entity for this report, *Proyecto de Derechos Económicos, Sociales y Culturales A.C.* (ProDESC), is a non-governmental organization (NGO) founded in 2005.¹ While ProDESC has accomplished very important and laudable work within Mexico, the organization seeks to broaden its knowledge and understanding of issues pertaining to the extractive industry and human rights on the global stage. More specifically, it aims to build cooperative understandings of the extractive industry's role and the subsequent impacts of its actions in local communities. With this mandate, this report seeks to explain interpretations of rights from different perspectives internationally, with a focus on the wide range of experiences and outcomes of communities seeking to enact or enforce rights on a local level vis-à-vis international organizations and agreements.

This report is structured to provide ProDESC with a comprehensive understanding of the implications of a rights based discourse in the international, regional, and local realms. This report begins with the conceptions and actions based on

¹ The main goal of ProDESC is the defense of economic, social, and cultural rights in Mexico in order to provide enforcement, justice, and accountability of these rights on a systemic level. ProDESC. (2009). About ProDESC. <http://prodesc.org.mx/index.php?option=com_content&task=view&id=37&Itemid=84>

the rights discourse from the perspective of both the transnational extractive industry and the international rights advocacy groups, then it moves to a discussion of an applicable human rights framework of the discourse. Next we couple this discourse and framework with its parallel on the local, community based level. Three case studies are reviewed to help comprehend different obstacles faced by mining communities, the possible nature of interventions, and potential partnerships available to ProDESC globally. The report concludes with concrete recommendations and a synthesis of the inter-functionalities and relationships between the varying conceptions of rights, companies, and communities. As the mission of ProDESC is “to defend, from an integrated perspective, all people who are exploited in regards to their economic, social, and cultural rights”², this report seeks to bolster this competency as well as further the field of action for the organization in the future.

Key Concepts:

Perspectives from the Extractive Industry

From a global perspective, “over 30 million people are directly employed by the mining sector and 34 countries rely on minerals for at least one-quarter of all their exports.”³ Mining companies are active in all continents of the globe seeking a vast variety of products to serve global needs. The largest mining companies are multimillion dollar businesses often with various subsidiaries, which focus on different extractive areas. Regarding rights, the industry has become more active in recent years with its own

² ProDESC. (2009). About ProDESC.

<http://prodesc.org.mx/index.php?option=com_content&task=view&id=37&Itemid=84>

³ WBCSD. (2009). Minerals and Mining.

<<http://www.wbcd.ch/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=ODA&doOpen=1&ClickMenu=LeftMenu>>

agenda, focusing on awareness of the social and environmental effects experienced by communities in which companies have mined. In 1998 a project called the Global Mining Initiative (GMI) was launched at a meeting of mining CEOs during the World Economic Forum in Davos Switzerland. The three main tenets of the GMI were as follows:

1. Industry review of objectives, effectiveness, and costs of its global trade associations
2. Global study to assess the contribution that mining can make to sustainable development
3. Industry event to announce its plans and research results before the World Summit on Sustainable Development in Fall of 2002⁴

To meet the Global Mining Initiatives, a trade association and lobby group was formed called the International Council for Mining and Metals and a public event was held in Canada called “Resourcing the Future” in May of 2002. The product of the event was a report called “Mining, Minerals and Sustainable Development Report” (MMSD), which is important as it is now one of the primary documents which the extractive industry uses to judge and monitor its actions in terms of the concept of sustainability.

Perspectives from International Rights Advocacy

The international human rights community has constructed its own social contracts and documentation to establish clear concepts of rights and guidelines applicable to mining communities. These differ from the standards set forth by the extractive industry primarily because they adopt the perspective of the indigenous communities at risk, rather than the economic viewpoint. Finding a term that best

⁴ CESR (2003). Human Rights Critique of the “Mining, Minerals, and Sustainable Development Report”

describes the individuals affected by mining projects is an important example of how these rights discourses differ.⁵

The United Nations, International Labor Organization (ILO), and the American Convention on Human Rights all define the terms *aboriginal* and *indigenous*. Agenda 21 conceptualizes indigenous as having “an historical relationship with their lands and generally as descendants of the original inhabitants of such lands.” ILO defines the term as “[people descended from] the populations which inhabited... a geographical region to which the country belongs, at the time of conquest or colonization ... and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions.”⁶ The 2007 extension of Article 21 of the American Convention was created to include the term *tribal communities* under its umbrella of those specified as having the right to control their territory without outside influence.⁷ This is an example of the Inter-American Court of Human Rights’ recognition that these rights may be inherent to communities other than those directly listed under the current definition of the law, and of the need to re-evaluate that definition over time.

There are common concerns in target communities of extractive industry projects. As demonstrated in the various definitions and conceptions, the issues of indigenous, aboriginal, tribal and local communities often overlap and are applied for

⁵ The extractive industry prefers to use the term ‘local’ rather than indigenous, as local does not connote the myriad concepts of ownership, particularly concerning ethnicity and culture, that is implied with the use of the term indigenous. Hence, even here we see a strategic use of a single word as representing the important varying implications of the different (linguistic) conceptions

⁶ United Nations . (1992). *UN Department of Economic and Social Affairs Division for Sustainable Development Agenda 21*. Retrieved 03 29, 2009, from: <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter26.htm> and the International Labour Organization (ILO). (2009, 03 29). Retrieved from <http://www.unhchr.ch/html/menu3/b/62.htm>

⁷ *Inter-American Court of Human Rights Case of the Saramaka People v. Suriname*. (2008, August 12). Retrieved 05 03, 2009, from: http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_saramaka_judgment_aug08_eng.pdf

different purposes, depending on which side of the debate the term is used.⁸ From an indigenous perspective, there are five elements, which result in a ‘framework’ concerning rights and claims that separate them from the larger community, especially regarding the extractive companies that enter (and exit) their communities. These are:

1. *Identity* – political but also bound to recognition of kin, social networks, place, and spirits;
2. *Territory* – land and the sustained network of social relations that are supported by it;
3. *Autonomy* – decisions based on communitarian consensus and indigenous perceptions;
4. *Participation* – acknowledgement of the right to be involved at all levels in the planning for alternative use of indigenous lands; and
5. *Self Determination* – the right to possess, control, manage, and develop a territory.⁹

An essential condition here is that land is integral to the conception of community and identity, and this often falls at odds with the global industry perspective.

Furthermore, the essential condition of ‘sustainability’ within indigenous communities – which is so central to the conception and debate regarding rights, communities, and corporations – differs substantially from the industry’s understanding in its practical implications.

The Brundtland Commission¹⁰ defines sustainable development as “development that meets the needs and aspirations of the current generation without compromising the

⁸ For the purpose of this report, the term *local community* is broadly operationalized as those communities directly affected by the impacts of extractive industry projects and used interchangeably with indigenous communities.

⁹ MMSD (2002). Chapter 7: The Control, Use, and Management of Land. *Breaking New Grounds: The Report of the Mining, Minerals and Sustainable Development Project*. Earthscan Publications Ltd: London

¹⁰ Formally known as the World Commission on Environment and Development (WCED) the Brundtland Commission was convened by the United Nations in 1983 to address issues to do with the deterioration of

ability to meet those of future generations, with overriding priority given to the essential needs of the world's poor.”¹¹ As replicated in international laws, the goal of human development is to establish a context in which people's range of choices is expanded and their human rights are fulfilled. Likewise, sustainable development requires the active and meaningful participation of all individuals to achieve and enjoy the benefits of development projects. This means all members of a community, particularly the indigenous or local individuals, must be included in decision-making concerning the environment in which they live.¹²

The Extractive Industry's International Initiatives

From a commercial perspective, mining is very big business, and as a consequence of the era of globalization, many of these mining companies are extremely large with various branches and subdivisions that essentially translate to truly global areas of operations. Entities like Rio Tinto, Vale and Anglo American, among many others, have global portfolios with a wide range of mining initiatives and resources.

Areas of Operation

Using Rio Tinto, arguably the second largest mining company in the world, as an example of the impressive reach of extractive industry companies, we truly see the global reach of operations, and hence the global dimensions and scale of conflict concerning today's extractive industries. Rio Tinto is active in most if not all of the sectors of the

the human environment, natural resources, and the consequences for economic and social development. (United Nations)

¹¹ Hewett, Andrew. (2007). Realising the Potential” Mining and Sustainable Development. *Oxfam Australia*

¹² Ibid.

extractive industry, from Aluminum to Uranium, Zinc to Copper.¹³ The company (or one of its subsidiary companies) is active on all the continents of the globe, and, as a consequence of such broad areas of operation and the sheer scale of the corporation, is perhaps the most notorious of the companies working in the extractive industry.¹⁴

Conflicts

Rio Tinto's conflicts with local populations reflect the experiences of other communities faced with massive extractive projects spearheaded by extremely large international mining companies. As with the cases discussed later in this report, like BHP, Manhattan Mining, and others, Rio Tinto has seen considerable conflict in many areas of its operations, some of which were truly notorious in scale and media coverage, with the company's work and investment in Burma being one of the more recent 'scandals' to gain the attention of the international media. Particularly notable are issues with rights and indigenous land ownership claims in varying areas and communities as far flung as Peru, Papua New Guinea, and Zimbabwe.¹⁵ In each of these cases, while the company claimed to be acting according to the ever-espoused principles of 'sustainability', local communities have acted to either force Rio Tinto to change its operations, or even to close down facilities and move away from the contested areas. The most notorious case was the Grasberg mine in Papua New Guinea, where "such serious human rights violations and environmental damage have been substantiated that the Norwegian Government's state pension fund disinvested from Rio Tinto last

¹³ The company states their main products are: aluminum, copper, diamonds, energy products, gold, industrial minerals (borates, titanium dioxide, salt and talc), and iron ore – a particularly broad and varying list. www.riotinto.com

¹⁴ Mines and Communities – www.minesandcommunities.org

¹⁵ Rio Tinto – http://www.riotinto.com/whatweproduce/our_operations.asp, and mines and communities - <http://www.minesandcommunities.org/article.php?a=8504>

September.”¹⁶ However, according to the company, their work is wholly responsible and incorporates all stakeholders, using multiple processes and principles:

*With social impact assessments, we look at the changes that may occur against the baseline due to a proposed activity, such as a project development, expansion or closure. We conduct social risk analyses to assess the risks and opportunities that these changes would pose to communities. We can then either avoid the risks or propose mitigation strategies to offset them.*¹⁷

International Agreements and Guidelines

As the global reach of mining initiatives has become more broad and prevalent in this era, the entirety of the international community has also attempted to consolidate standards in mining activities and general concepts of ‘accountability’ and ‘sustainability.’ As pressure has been leveraged from communities and advocacy groups, the extractive industry in general has been forced to call its practices into speculation to respond to these international claims. As a result, in conjunction with several NGOs and public interest groups, a number of ‘guidelines’ and ‘protocols’ have been formed within the industry, in order to address public concern within the industry. However, as we shall see, the actual impact of all these initiatives is disputed.

Global Reporting Initiative – the G3 guidelines

One of the largest initiatives concerning the extractive industries is the Global Reporting Initiative (GRI). A sustainability reporting framework defined as “a large

¹⁶ Mines and Communities: ‘Rio Tinto Attacked from all sides’, April 20, 2009. Available at <http://www.minesandcommunities.org/article.php?a=9194>

¹⁷ Rio Tinto: Social Wellbeing and Communities. Available at http://www.riotinto.com/ourapproach/17215_communities.asp

multi-stakeholder network of thousands of experts, in dozens of countries worldwide, who participate in GRI's working groups and governance bodies, use the GRI Guidelines to report, to access information in GRI-based reports, or to contribute to developing the Reporting Framework in other ways – both formally and informally.”¹⁸ As this definition shows, the GRI is essentially a vehicle of loose collaboration between people involved in the extractive industry sector (either in support or opposition). Over 1500 companies, including some of the industry's leaders, have accepted its guidelines, known as the G3. While initially the initiative was not wholly focused on the extractive industry, it has become one of the standards in reporting.

These guidelines, as with others, outline key concepts in ‘sustainability’ and ‘partnership.’ However, the operative words are “flexibility and creativity”¹⁹ in preparing reports, which again entails a variance in reporting and actual progress towards sustainable issues, especially concerning environmental impacts and the involvement of communities. It is also very important to note that the disclosure mandate within the guidelines is self-reporting and policing, hence the validity and real implications of these reports leaves much to be desired in terms of actual impacts.

Mining, Minerals, and Sustainable Development Project and the International Council on Mining and Minerals

The Mining, Minerals, and Sustainable Development (MMSD) project was undertaken by the World Business Council on Sustainable Development from 1999-2003. It produced a large report and led to the foundation of the International Council on Mining and Minerals (ICMM), which is a leading organization that “serves to represent

¹⁸ GRI - <http://www.republicofmining.com/2008/06/12/global-reporting-initiative/>

¹⁹ GRI Brief - www.globalreporting.org. See Reporting Framework: <http://www.globalreporting.org/ReportingFramework/ReportingFrameworkOverview/>

the views of its members and promote science-based regulations that encourage market access and the safe production, use, reuse and recycling of metals and minerals. It is also committed to identifying and advocating the use of good practices to address issues within the industry.”²⁰ The ICMM has a variety of advocacy partners, including the IUCN, UNCTAD, EITI, the ILO, etc. and has a sustainable development framework that it has developed from these consultations. Essentially, this framework measures activity against the 10 points of sustainability (see page 10), encourages (not mandates – there is no legal ramification system) members to report on these 10 points, and then assists to provide third party verification of the companies claims.

AA1000

Similar to the MMSD and the ICMM, the AA1000 is an initiative that seeks to create standards for the extractive industry based on ‘inclusivity’, ‘materiality’, and ‘responsiveness’, and is based in six main member countries: Brazil, Canada, China, Jordan, Spain, Sweden and the US. The inherent value in the initiative is concerning its stakeholder approach, which is widely used in the industry. A focus on stakeholder engagement is innovative as it seeks to address problems and concerns when they are potential rather than actual, which helps both communities and corporations to forge consensus in projects, and this is a step forward from the corporate perspective. However, as with all the other agreements and initiatives discussed, the voluntary nature of the agreement, and hence the lack of specific legal ramifications for violators of its principles, results in the AA1000 being less impactful than it could be as a legal standard.

²⁰ WBCSD - <http://www.wbcsd.ch/templates/TemplateWBCSD1/layout.asp?type=p&MenuId=MTQx>

*Extractive Industries Transparency Initiative*²¹

The Extractive Industries Transparency Initiative (EITI) focuses on the idea of transparency by compelling members to publish publicly and verify publicly company payments and government revenues from extractive activities and business ventures. Founded by the UK government, the initiative is narrowly focused on transparency (primarily in the mode of contracts between governments and transnational corporations), and hence overlooks other very important aspects regarding rights and communities. Furthermore, while the initiative is considered progressive in the field, it is lacking in inclusion of important stakeholders, with the most prominent example of this fact being that Azerbaijan is so far the only country compliant with EITI standards (with other ‘candidate countries’ moving towards compliance). This again reflects the problem with many of these corporate based initiatives and agreements (and government agreements focused on limiting corruption and halting the siphoning of wealth by private individuals from national resources) – the actual ‘teeth’ and scope of the agreement that can produce actual positive impacts in communities is quite limited. Also notable is that Azerbaijan is not one of the world’s largest mineral rich countries. However, as EITI is still relatively young, and is seen as gaining traction globally (with a number of countries considering candidacy), it does hold some promise in terms of achieving practical change. Nonetheless, virtually none of the large countries highly dependent on the industry (South Africa, Angola, Sierra Leone, Brazil, etc) are presently considering candidacy.

Issues

One of the largest problems with the GRI, the ICMM, and other guidelines, is the entirely voluntary nature of submission and adherence from extractive industry

²¹ EITI - <http://eititransparency.org/>

companies, which coupled with the lack of truly independent monitoring and compliance entities produces a troublesome scenario of a lack of real impact (and consequently the realm of possible action in local communities in terms of the implications and avenues of interaction with the entities governed by these agreements). In short, the agreements have no ‘teeth’ to actively create change toward more sustainable practices in the sector. They are not legally binding and do not force disclosure of company activities, and this is central to their actual contribution towards sustainability in the sector.

On the other hand it is important to note that these agreements, although limited in their impact, provide tools for activists to engage the extractive industry on its terms – with these agreements there is a standard, while not agreed upon in terms of consensus between the industry, advocacy groups, and communities, that at least provides a point of leverage for individuals or groups who wish to challenge aspects of the extractive industry (or the companies therein) performance concerning sustainability. As many companies now report internal data and findings, activists and other groups can now access these reports and engage them where there are discrepancies or shortcomings. Furthermore, non-reporting companies are vulnerable to the criticism that they are not in line with the new standard of self reporting in the industry.

The concept of Sustainability from the industry perspective

According to the GRI, sustainability is considered from the perspective of a ‘triple bottom line’, concerning economic, environmental, and social impacts from extractive processes and endeavors. Interestingly enough, the concept of sustainability is also relevant from the very economic perspective of mining companies themselves –

companies must act sustainably in their extractive efforts in order to maintain the long term viability of the industry itself.

The ICMM defines sustainability under 10 key points²²

- Implement and maintain ethical business practices and sound systems of corporate governance.
- Integrate sustainable development considerations within the corporate decision-making process.
- Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.
- Implement risk management strategies based on valid data and sound science.
- Seek continual improvement of our health and safety performance
- Seek continual improvement of our environmental performance
- Contribute to conservation of biodiversity and integrated approaches to land use planning
- Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products
- Contribute to the social, economic and institutional development of the communities in which we operate
- Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders

Essentially, there is a problem of the ‘too much paper not enough action’ in all of these agreements, some of which contain the same companies and advocacy groups and working towards the same ends. The common criticism of ‘lip service’ while lacking any actual progress on the ground, nor any measure of accountability that entails legal ramification, is something that plagues all of these initiatives, and muddies the concept of sustainability as more theoretical than practical (to date). Also noticeable is that these agreements have varying definitions of sustainability, which though while loosely

²² ICMM - <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>

conforming to each other, do contain differences and exacerbate the problem, again, of multiplying agreements and initiatives with little actual progress.

Again, we see the problems of actually enacting these lofty principles of ‘Corporate Social Responsibility’ (CSR) and ‘sustainability’ in actual situations (with the MMSD being a specific example), and this is exactly the critique that is leveraged against the industry by advocacy groups and NGOs involved in the field. Essentially, any top down model, with CSR as only one of many factors in the industry’s equation of profitability, is bound to have serious problems in its actual application: “CSR is decried by critics as a farcical form of ‘greenwashing’, nothing but old wine in new bottles, as ineffective, irrelevant, or even actively harmful to the communities it purports to serve.”²³ Despite the many proliferating agreements and voluntary reporting mandates in the industry, it seems unlikely that the situation will change substantially in the future. However, from a different perspective and conception of rights, we shall see different means of addressing the problem, and perhaps, achieving results.

International Rights Advocacy: A Human Rights Perspective

The international human rights community has long been concerned with the treatment and participation of indigenous communities in regards to their land and continues to place significant pressure on the extractive industry to be more socially and environmentally responsible. The corporate guidelines and agreements, discussed in the previous section, have yet to meet the standards of human rights and responsibility that the human rights community demands. One example of this lies with the various

²³ Fulmer, A., Godoy, A.S., & Neff, P. (2008). *Indigenous Rights, Resistance, and the Law: Lessons from a Guatemalan Mine*. University of Miami, pg. 111

criticisms of the MMSD, which was ultimately rejected by the majority of mining advocates and coalitions because of its scant mention of the considerations of non-corporate entities. The report was criticized for diffusing dissent by splitting the dissenters and reincorporating their concerns in a manner that supports the ultimate corporate aims of maximizing profits.²⁴ It was heavily critiqued by the Center for Economic and Social Rights (CESR) through a human rights perspective. The importance of the CESR critique of the industry's report was that it pointed out that the document did not accurately use the principles, language, or international standards of human rights either to describe the industry's instances of wrongdoings or to discuss how to better uphold these rights more faithfully in their future mining activities. In fact the CESR states that the report was contradictory in its approach to human rights and therefore did not serve its intended purpose.²⁵

As implied in the previous section, the work done from the perspective of indigenous communities towards rights differs considerably from the global industry perspective. The ILO Convention 169, *International Labor Organization's Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, stands as the only international treaty dealing with indigenous populations and their land rights. It was designed to provide campaigning tools for rights advocates to help protect indigenous community's ownership of traditional land by allowing them to manage development projects according to their priorities. This ILO convention was adopted in 1989, as a means to update the original 1957 *Indigenous and Tribal Peoples Convention*, because of

²⁴ Clark, Tim. (2003). Canadian Mining Companies in Latin America: Community Rights and Corporate Responsibility. *Centre for Research on Latin America and the Caribbean: Colloquia Paper*, January 2003

²⁵ CESR (2003). Human Rights Critique of the "Mining, Minerals, and Sustainable Development Report"

its outdated assimilationist attitudes and tactics towards indigenous communities. The convention offers protection for various essential human rights to local populations at risk of exploitation, many of which were specifically relevant to those effects of the extractive industries.²⁶

In 1969 the American Convention on Human Rights was adopted by the Americas' nations with the purpose of creating a system of promoting and protecting personal liberties based on the respect for human rights. The institutions created to oversee compliance with this Convention were the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights. The latter was established as a regional court that serves as a meaningful source of support for those who suffer from human rights abuses in the Americas and more specifically, to provide enforcement and interpretation of the provisions of the American Convention on Human Rights.²⁷

The United Nations has also addressed issues related to sustainable development and community consultation through the formation of the UN Department of Economic and Social Affairs Division for Sustainable Development (DSD).²⁸ For example, *The*

²⁶ Fulmer, A., Godoy, A.S., & Neff, P. (2008). *Indigenous Rights, Resistance, and the Law: Lessons from a Guatemalan Mine*. University of Miami

²⁷ Although the Inter-American system has provided some legal footing for legitimizing the redress of human rights abuses, critics have pointed to a number of limitations. For example, the commission and court are only allowed to hear cases after national legal remedies are deemed to have been exhausted. Furthermore, the court is empowered only to hear cases against national states, not corporations. Fulmer, A., Godoy, A.S., & Neff, P. (2008). *Indigenous Rights, Resistance, and the Law: Lessons from a Guatemalan Mine*. University of Miami

²⁸ The DSD serves as the substantive secretariat to the UN Commission on Sustainable Development (CSD), created to provide a leading role and authoritative source of expertise within the UN system on issues of sustainable development. The CSD reviews the progress and reports of DSD implementation of Agenda 21, the Johannesburg Plan of Implementation (JPOI), and the Barbados Programme of Action (BPOA) at the international, regional and national levels. Source United Nations (2009). Sustainable Development in Brief. *UN Department of Economic & Social Affairs website*, Retrieved May 4, <<http://www.un.org/esa/desa/aboutus/dsd.html>>

United Nations Draft Declaration on the Rights of Indigenous is a relevant work that the UN produced in regards to those affected by mining and extractive industry projects. In 2001 the UN held the *Workshop on Indigenous Peoples, Private-Sector Natural Resources, Energy, and Mining, Companies, and Human Rights*, which acknowledged the relevance of existing and emerging human rights standards established by the ILO 169, specifically affirming the need for “full recognition of indigenous peoples’ rights to their lands, territories, and natural resources.”²⁹ Additionally, it affirmed that the indigenous communities have the right to participate in the potential development of their land and recommended that the relevant actors including the states, the UN, indigenous communities, and private sector elaborate a framework for consultation, guided by respect for free, prior, informed consent of all parties involved.³⁰

Many international non-governmental organizations work to respect, protect, and promote the human rights of local communities affected by mining projects, several joined together to create the Global Mining Campaign (GMC) in December of 2001. Through their collaborative efforts, this international network holds mining companies accountable for their performance on human rights, environmental impacts, and other social and economic costs of mining.³¹

Another international networking organization, founded in 1995, is Oxfam International. Oxfam International is a global confederation of 13 development NGOs who are like-minded organizations working as allies to reduce poverty and injustice

²⁹ MMSD (2002). Chapter 7: The Control, Use, and Management of Land. *Breaking New Grounds: The Report of the Mining, Minerals and Sustainable Development Project*. Earthscan Publications Ltd: London

³⁰ MMSD (2002). Chapter 7: The Control, Use, and Management of Land. *Breaking New Grounds: The Report of the Mining, Minerals and Sustainable Development Project*. Earthscan Publications Ltd: London

³¹ CESR. (2003). Human Rights Critique of the “*Mining, Minerals, and Sustainable Development Report*”

worldwide. This alliance undertakes development programs and humanitarian response in over 100 countries, advocating for policy changes to promote human rights and help eliminate poverty. They are based in Australia, Belgium, Canada, France, Germany, Great Britain, Hong Kong, Ireland, The Netherlands, New Zealand, Quebec, Spain and the United States.³² Oxfam points out that although many nations have signed and ratified the ILO Convention, most problems lie with the lack of protection for these communities reflected in national laws, a point we address in more detail later.³³

Oxfam branches advocate directly with corporations, financial institutions, and states to ensure greater corporate social responsibility and the respect for the local communities. In efforts to achieve these goals, Oxfam conducts global campaigns to create new human rights and environmental standards and encourage greater transparency of mining revenues. They also help strengthen local organizations to better defend their local community's rights to meaningfully participate in decision-making about their land involved in mining projects.³⁴

In comparison, the rights based discourses of the corporations behind the mining projects and the organizations whose aim is to protect the individuals affected by such activity, are significantly diverse. As seen, this discrepancy causes disputes between the two entities. For our discussion of best practices and shortcomings of human rights in

³² Ibid.

³³ Oxfam International. (2009) <<http://www.oxfam.org/en/about/history>>

³⁴ Some of Oxfam International past achievements include working with the Economic Community of West African States (ECOWAS) to create a common mining convention for the entire region. This work included working with the civil society of West Africa to help ensure their participation. Oxfam has also worked with local organizations and governments in Central America (Honduras, El Salvador, and Guatemala) to reform mining legislation to be more protective of the local communities who are risk of exploitation. Oxfam International. (2009) <http://www.oxfamamerica.org/whatwedo/issues_we_work_on/oil_gas_mining>

mining communities, we apply a human rights based framework to help guide our analysis of these conflicting discourses and the case studies that follow.

Framing the Conflict: The Human Rights Based Approach

According to the Australian Human Rights and Equal Opportunity Commission (HREOC), “Human rights constitute the ethical basis of the social contract between those who exercise power and accrue wealth, and those whose lives are affected by this exercise and accrual.”³⁵ Mining communities rely on this ethical basis in order to achieve a fair and sustainable relationship between the local populations and the mining companies that exploit the land. Although there are significant differences from case to case, the realization of the human rights of these local communities is universally essential to achieve an ideal partnership based on respect and consent.³⁶

The Human Rights Based Approach (HRBA) is an analytical model that recognizes and applies the international standards for universal human rights. The objective of incorporating the HRBA to the assessment of mining communities’ rights is to examine these populations through a consistent human rights lens by applying both established discourse and theory. This section of the report will provide brief descriptions of the HRBA principles in efforts to better comprehend its application. Particular focus will be placed on the disadvantages that local populations within mining communities typically face in the protection for their rights. Then we review three case studies and the progress made by both international and various local organizations and

³⁵ HREOC, (2009). “Human Rights Based Approach to Mining on Aboriginal Land.” *Australian Human Rights and Equal Opportunity Commission*

³⁶ Ibid.

activists have achieved in the promotion and protection of the rights of mining communities, by applying the HRBA framework. Finally, we will draw upon the solutions for how these human rights have been achieved in specific cases.

Rights holders and duty-bearers

The human rights principles of ‘rights-holders and ‘duty-bearers’ are among the most distinguishing factors of any human rights approach. All people have rights that they are entitled to claim and are considered right-holders by international human right standards. The HRBA not only recognizes individuals as right-holders who are recipients of rights but also as participants in the processes of protecting and managing their way of life. In other words, the HRBA emphasizes that rights empower individuals to make claims on the social order. In the case of mining communities, the indigenous or local community members are recognized as the legitimate right holders.

These rights correspond with obligations of the duty-bearers, normally the state, which is required to take appropriate actions by implementing policies to see that individuals’ rights are respected, protected and fulfilled.³⁷ In addition to the state, in which these mining communities are located, the mining companies are considered legitimate duty-bearer of rights for the communities in which they mine. The duty-bearers are obligated to assure the realization of rights as well as to respect, protect, and promote the rights of the individuals for whom they bear responsibility. They are likely to succeed in achieving these goals through the implementation of the other HRBA principles, such as non-discrimination and equality, empowerment and participation of

³⁷ Donnelly, Jack. (2003). *Universal Human Rights: In Theory and Practice (2nd Ed)*. Ithaca, New York, Cornell University Press
UNDP.(2000). *Human Development Report 2000*. Oxford: Oxford University Press

individuals within the communities, and respect for the indivisibility and interdependency of all rights.³⁸ The concept of the duty-bearer serves as arguably the most fundamental principle of the HRBA in regards to mining communities, due to the defined and crucial role of the state as primary promoter, protector, and fulfiller of their local community's human rights.

Right to equality and non-discrimination

The principles of equality and non-discrimination are a constant theme in the human rights framework and well established in the UDHR, conventions, and other important human rights documentation. The principle of non-discrimination obligates states to uphold the equal treatment of individuals and groups by ensuring their rights to equal opportunities to all members of society.³⁹ From the perspective of the human rights principle of non-discrimination, even sovereign indigenous communities are deserving of equal treatment to the non-indigenous citizens of the state.

True participation and empowerment

True participation refers to the active and well-informed collaboration of individuals within a community. Likewise, empowerment is enabling individuals to make choices concerning their own livelihood. In many cases, empowerment takes shape as a process where one must break through the many factors that create powerlessness, such as the lack of individual security and/or political participation, to create conditions

³⁸ OHCHR. (2004). *Human Rights and Poverty Reduction: A Conceptual Framework*. New York: United Nations

Fukuda-Parr, Sakiko. (2007). "Human Rights Based Approach to Development - Is it Rhetorical Repackaging or a New Paradigm?" *HD Insights*, Issue 7

³⁹ Ibid.

where people are more enabled to lead their lives as they see fit.⁴⁰ The concept of rights and its accompanying obligations of duty-bearers aid the empowerment of people by legitimizing their demands on society and the state. All individuals are to be rights-holders demanding that the duty-bearers live up to their obligations. This process of empowerment can be especially effective when rights become codified into law, thus giving rights-holders a legal, moral, and ethical claim to their individual rights.⁴¹ As seen in several of the international agreements discussed, these principles are crucial for the success of a fair and balanced partnership within mining communities because they provide the basis for an ethical and sustainable relationship between the local community and mining company based on free and informed consent. This is in line with the concept of sustainability addressed earlier from the industry perspective, and provides one instance of intersection between a rights based perspective and a corporate perspective. However, if indeed this will produce tangible results is unknown.

Indivisibility and interdependence of rights

The principles of indivisibility and interdependence hold that all human rights are important and indeed necessary for the pursuit of a more dignified life and that trade-offs between them are unacceptable. The “universal, indivisible, interdependent and interrelated” nature of human rights summarizes the emerging consensus in the human rights arena that there should be no separation between the civil and political rights and the economic, social and cultural rights.⁴²

⁴⁰ Ibid.

⁴¹ Donnelly, Jack. (2003). *Universal Human Rights: In Theory and Practice (2nd Ed)*. Ithaca, New York, Cornell University Press

⁴² Ibid.

All of the HRBA principles are relevant to the development of a sustainable relationship between local communities and mining companies. But before further analysis of the application of this human rights based framework, we will turn to three case studies as examples of how these rights are actually established or violated and the process of fighting to protect and promote the human rights of mining communities.

Case Studies: Violations and Fulfillments of Rights

The following are cases that have been included either for the effective resistance strategies that the communities, and their advocates, employed or for the successful solution or negotiations that they accomplished for the parties involved, regarding extraction projects in their communities. In each case there is a common thread that the practice of attaining the free, prior, and informed consent (FPIC) of the community and its leaders is imperative to the project's success, as is the inclusion of the community in the decision-making process from the beginning.⁴³

The first case study examines the situation of the Haida Nation, an aboriginal community in Canada, which pursued legal action after their land was subjected to an extractive industry project without their consent. The business risks to the government, as well as the company, are revealed in the decision by the court in favor of the aboriginal community. The second case, also in Canada, is an example of a partnership between the extractive industry and its target community that progressed successfully precisely because of its inclusion of the community in the decision-making process. The third case

⁴³ Spears, S. A., & Laplante, L. J. (2008). Out of the conflict zone: the case for community consent processes in the extractive sector. *Yale Human Rights and Development Law Journal* , 1 - 46

comes from Peru and is a clear example of non-consent of the local population to a proposed mining project in their community.

Consent of the local community is not the only challenge to the successful outcome of extractive projects. The issues are also inadequately captured by current corporate social responsibility (CSR) practices. These practices often are limited to concerns that can be isolated in terms of environment, human rights, or health and safety.⁴⁴ Disputes over community control of the direction of their lives and control of resources are often not legible within the realm of CSR understanding.⁴⁵ Saleem Ali supports this argument in his book, *Mining, the Environment and Indigenous Conflicts*. Ali argues that often resistance to mining projects, although frequently attached to environmental issues, usually involves the right to control their territory.⁴⁶ He advocates inclusion of local communities in project development as a means to successful outcomes for extractive industry projects. In the case of the Tambogrande mine in Peru, one community's successful attempt to make their struggle legible will be examined. The methods the community used infiltrated the small, narrowly defined range of issues acknowledged under CSR and forced the national government to listen and act in the best interests of the community.

In order to properly situate these case studies in the framework of this report, it is important to operationalize a few terms. FPIC is a term, which lacks a standard

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ali, S. H. (2003). *Mining, the Environment, and Indigenous Development Conflicts*. Tucson, AZ, USA: University of Arizona Press.

definition between NGOs and the extractive industries.⁴⁷ According to Suzanne Spears et al, “consent requires that a community has discussed important issues together with their leaders and with the project sponsor until they have determined that, on balance, they will benefit from the project and are satisfied that mechanisms are in place to address any problems that arise.”⁴⁸

The need for clarification does not end with the definition of consent. Other factors that impact FPIC are: 1) the method used to define ‘informed.’ Is education required for the consent to be considered informed? 2) The ability to identify the proper community. Is the community defined as only those directly impacted by the project or does it also include those affected by the cumulative impacts? And 3) what are the boundaries of that consent? In other words, at what point is consent no longer valid and a new effort to obtain consent necessary?⁴⁹ FPIC should be understood as an on-going dynamic process of communication and negotiation throughout the project term.⁵⁰

In the case of the Haida Nation in British Columbia, a ruling by the Supreme Court of Canada established a precedent that required provincial governments to consult indigenous communities concerning extractive projects that affect their lands. Since the 1970s, tree farming licenses had been granted on the Haida Nation lands (also known as Haida Gwaii) by the provincial government. The history of the Haida Nation’s struggles to stop the logging began with blockades of the access road to the old growth forests by

⁴⁷ Spears, S. A., & Laplante, L. J. (2008). Out of the conflict zone: the case for community consent processes in the extractive sector. *Yale Human Rights and Development Law Journal* , 1 - 46.

⁴⁸ Ibid. p14

⁴⁹ Ibid.

⁵⁰ Herz, S, et al. (2007). Development Without Conflict: The Business Case for Community Consent. Report. World Resources Institute.

leaders and members of the nation in 1985, and included the negotiation of the Gwaii Haanas Agreement in 1993. The agreement, administered by the Gwaii Haanas Agreement Management Board (AMB), was key in the case later brought against the government of British Columbia, because it was a formal recognition of the Nation's interests in their ancestral lands.⁵¹

In the 1990s the provincial government allocated an area covering approximately one quarter of the Haida Nation's lands to Weyerhaeuser Co. for logging purposes. Since title to this land was under dispute by the Haida Nation, the Council of the Haida Nation (which represented the Nation) claimed that there was a legal duty, on the part of the government, to consult them before assigning any commercial purposes to the land. Despite the Gwaii Haanas Agreement, which allocated a portion of CA\$106 million to a forest replacement account and a national park reserve, the community further claimed that they might find themselves deprived of resources vital to their economy and culture. The reasoning behind the claim was that these licenses were being granted prior to the conclusion of the dispute over title to the land, and it was likely that legal title was not estimated to be resolved before irreversible damage was done.⁵²

After the case went through the Canadian Court of Appeals and the Canadian Supreme Court, the claims of the Haida Nation were upheld in 2004. As part of the decision, the Haida Nation was given a seat at the negotiation table in land and resource development projects intended for their territory. As a result of the decision made by the Canadian Supreme Court, the provincial government was deemed to have a legal

⁵¹ National Center for First Nations Governance– http://www.fngovernance.org/toolkit/TI_Haida.htm

⁵²Haida Nation v. British Columbia (Minister of Forests), 2004 SCC73, [2004] 3 S.C.R 511

obligation to “consult with Aboriginal peoples and accommodate their interests.”⁵³ The court made this decision based on prior case rulings and its interpretation of Canada’s constitution. Consequently, a general framework was established whereby the government must consult with aboriginal groups regarding land and resource development in those regions where land rights are speculated to belong to aboriginal communities. Although the process does not give aboriginal groups the right to stop or deny the project action, it outlines that in some cases the government must include these communities in decision-making and at times even accommodate the aboriginal groups.⁵⁴

The consultation process is promoted as a benefit to industry in that it will clarify its responsibilities to the aboriginal communities and identifies the government as the liaison responsible for ensuring that the communities have been properly consulted. This decision also resolved the question of aboriginal communities and veto power. It is made clear that there is no duty to reach agreement and in the end the government retains the right to manage the resource for the good of all its citizens.⁵⁵ The process of legal recognition is not a simple or quick solution. As can be seen from the Haida Nation’s struggle, cases can take upwards of 30 years to resolve and some communities may not be able to withstand the negative impacts of a wait that long. Factors that contributed to the Haida Nation’s success include grassroots involvement of the community and adaptive co-management of the land through the AMB.⁵⁶ The Haida Nation managed to link their case to an appeal based on the importance of the connection of their way of life

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ National Center for First Nations Governance– http://www.fngovernance.org/toolkit/TI_Haida.htm

to environmental preservation and the positive impact of the public good created by the national park reserve.

The next case concerns the Northwest Territories in Canada, a region that contains a high concentration of aboriginal communities where roughly 50% of the population is of aboriginal descent.⁵⁷ Because of their subsistence way of life, this region has a high unemployment rate, low education level, and a significant substance abuse problem among its members.⁵⁸ In the 1990s a subsidiary of BHP Billiton (BHP) received permission from the federal government to pursue the first diamond mine in the region. BHP clearly understood the importance of access to this mineral source and endeavored to make the project as attractive as possible to the local community. From the beginning, the company sought the input of the local community regarding the project and the benefits that the community hoped to derive from it. The partnership of BHP and the local community with respect to the diamond mine, although not always cohesive, was dynamic and is an example of the mutual successes that can be achieved through inclusion of local communities from the beginning of a proposed project. BHP's roadshow to the local communities was thorough and "made use of field trips, presentations, cultural exchanges, and community meetings to bring them on board."⁵⁹ Significant negotiations over the tenor of BHP's interaction with the aboriginal community resulted in BHP using an environmental agreement as a guideline to address

⁵⁷ Kwiatkowski, R. E., & Ooi, M. (2003). Integrated Environmental Impact Assessment: A Canadian Example. *World Health Organization*

⁵⁸ MiningWatch Canada (1999). *Between a Rock and a Hard Place: Aboriginal Communities and Mining. Innu Nation/MiningWatch Canada Workshop Ottawa, Ontario Sept. 10-12, 1999.* Retrieved May 05, 2009 http://www.miningwatch.ca/index.php?/Canada_en/Rock_hard_place

⁵⁹ Couch, W. J. (2002). Strategic resolution of policy, environmental and socio-economic impacts in Canadian Arctic diamond mining: BHP's NWT diamond project. *Impact Assessment and Project Appraisal*, 20(4), p272

the needs of the community and to monitor the company's impact. In answer to the communities' concerns about minimizing damage to the local land and biodiversity, BHP proposed relying on existing winter ice roads where possible and flying its workforce to the mine instead of building new roads where it wasn't possible. In response to employment concerns, the company implemented a program of preferential selection of the local community for employment, with particular focus on the indigenous community. Over 700 permanent jobs were created and specifically staffed by residents of the territory, with at least 30% of those going to the aboriginal community.⁶⁰ In those areas where training was required in order to employ indigenous community members, it was provided. BHP agreed to shift rotation of workers on two-week intervals so they could stay within their home communities while also minimizing the need for new permanent roads. This had the added bonus of preventing the spread of new communities and preserving traditional relationships with the land. Scholarships were created for students in the communities active with the mining project and health services were provided to the community as well.⁶¹

The communities connected to the BHP diamond mine have benefited from these programs that were implemented. They have seen their average annual income increase dramatically since BHP brought the mining project to their town. However, these solutions were not perfect and they reinforce the need for constant and dynamic assessment practices by the project sponsors to ensure that the well being of the community is not degraded by impacts of the project. One example of unexpected

⁶⁰ Kwiatkowski, R. E., & Ooi, M. (2003). Integrated Environmental Impact Assessment: A Canadian Example. *World Health Organization*

⁶¹ Ibid.

negative impacts from the strategies used can demonstrated using the rotating work schedule. The constant upheaval creates added stress for the employees. They find it difficult to adjust to life at the mine when coming from home and to life at home when coming from the mine. The two lifestyles are very different and these frequent absences from home also exacerbate substance abuse problems that were already prevalent in the community.⁶² The practice of cycling the employment schedule has a gender bias in that women with young children are unable to participate in mine employment. The facilities provided by BHP at the mine sites do not include care for small children. The fact that more women remain behind while the men work at the mine has led to women taking more and more leadership roles in the communities.⁶³ This is also a source of increased tension for the workers on their two-week home stints.

In the case of the Tambogrande mine in Peru, the local residents, with the help of national and international NGOs, created a massive campaign to save their way of life. Their campaign generated enough local and international support to pressure the government and successfully stop Manhattan Minerals Corp (MMC), a Canadian transnational corporation (TNC), from digging a gold mine in their town. In their article for *Political Geography*, Hårvard Haarstad and Arnt Fløysand argued the local community of Tambogrande was successful in its bid to stop MMC, because NGOs with which they partnered, particularly Oxfam, repositioned the issue to reflect a struggle for the protection of national identity and democratic rights.

⁶² MiningWatch Canada (1999). *Between a Rock and a Hard Place: Aboriginal Communities and Mining. Innu Nation/MiningWatch Canada Workshop Ottawa, Ontario Sept. 10-12, 1999*. Retrieved May 05, 2009 http://www.miningwatch.ca/index.php?/Canada_en/Rock_hard_place

⁶³ Ibid.

Estimated to have mineral deposits of gold, copper, silver, and zinc with a value in excess of US \$1 billion under the streets of Tambogrande, MMC received concessions from the Peruvian government to mine in the town and the surrounding area.⁶⁴ As part of this mining project, MMC proposed to relocate 8,000 of the local residents, divert a river and dig an open-pit mine 3km in diameter.⁶⁵ The primary industry of this region was agriculture, specifically mangos and limes. According to Earth Justice, Tambogrande farms are the principal exporters of Peru's mangos.⁶⁶ The farmers were concerned that severe storms during the El Niño season would cause the pit to flood and contaminate the water sources used for drinking and irrigating the fields. The environmental impact assessment commissioned by MMC did not show a potential threat, but the impact assessment commissioned by NGOs revealed that contaminated aquifers would be a significant threat to the region.⁶⁷ There were peaceful protests in the streets and a referendum with an overwhelming majority vote against the mining operations. The referendum was discredited by the MMC's claim that the people were not fully informed when they voted.⁶⁸

The government's lack of response and unwillingness to support or accommodate the local community's concerns led them to embark on a campaign which eventually forced MMC out of Tambogrande. In addition to the protest—where participants were

⁶⁴ Boyd, S. (2002). *"Tambogrande Referendum Has Domino Effect in Peru."* Americas Program. Silver City, NM, USA: Interhemispheric Resource Center.

⁶⁵ Haarstad, H., & Fløysand, A. (2007). Globalization and the power of rescaled narratives: A case of opposition to mining in Tambogrande, Peru. *Political Geography* (26), 289-308.

⁶⁶ EarthJustice. (n.d.). *Human Rights and the Environment*q. Retrieved 05 02, 2009, from http://www.earthjustice.org/our_work/issues/international/human_rights/case-studies/tambogrande.html

⁶⁷ Ibid.

⁶⁸ Boyd, S. (2002, July 16). Tambogrande Referendum Has Domino Effect in Peru. *Americas Program*
.Boyd, S. (2002, July 16). Tambogrande Referendum Has Domino Effect in Peru. *Americas Program*.

accused of destroying the Tambogrande offices of MMC— the community used their farmers’ organization, Frente de Defensa, to lobby on their behalf with the government in Lima and with NGOs. With the assistance of Oxfam, they worked to increase national awareness of the situation in Tambogrande and to accumulate the support of the Peruvian people through campaign protests with slogans such as “*sin lima no hay ceviche*” (without limes there is no *ceviche* – a traditional Peruvian dish).⁶⁹ This campaign targeted national pride, which highlighted the quintessential role of Tambogrande’s limes in the heritage of Peruvian culture.

Oxfam also worked to generate international awareness and support. Part of the strategy was to create a public image of the local community as agriculturalists, rather than as the poor, unskilled farm labor image that MMC painted. With the help of Oxfam and other NGOs the community was able to articulate their claims in ways that attracted political legitimacy. In the end, political pressure from outside and inside the country forced the Peruvian government to revoke the mining company’s operating license.⁷⁰

The case of Tambogrande is an example of the value in repositioning the scope and scale of the unresolved concerns that result from the impacts, actual or potential, of mining in local communities. The image of the local community is integral to generating support as it determines whether the population in question is perceived as able to understand the implications of the development options presented to the communities. It also determines the perception of entitlement of the community to direct, or be consulted

⁶⁹ Haarstad, H., & Fløysand, A. (2007). Globalization and the power of rescaled narratives: A case of opposition to mining in Tambogrande, Peru. *Political Geography* (26), 289-308.

⁷⁰ Ibid.

in, the development of their lands. Interested parties, both external and internal, may identify with the image created and empathize with the local community.

Finally, this case study makes clear that networking is important. The NGOs channeled the social conflict into a legitimate and democratic process. By linking into advocacy networks and repositioning their struggle, the NGOs were able to help the community align their political struggle with similar struggles going on elsewhere. As indicated by Hugo Blanco, "...the greatest weakness [of indigenous communities] is limited communication among those who are fighting... Those who are fighting in one area need to know what is being done in other areas... to take from them what is useful."⁷¹

Applying the HRBA Framework

These three cases show the power behind consent and participation of the target communities and broadening the scope of CSR. The Haida and Tambogrande cases are examples of the ultimate setback, project cessation. Perhaps a successful partnership between community and government, or community and industry, could have developed if the provincial government took the time to consult the Haida Nation and gain their consent to proceed with the project. If the duty-bearers, or project sponsors, had taken the time to include the local community in the planning process, it is quite possible that a compromise could have been achieved. As is exemplified by the diamond mine case, constant communication with the community and transparency in project planning and implementation can lead to very successful project outcomes. Keeping an open dialog with the community led to surmountable obstacles and access to, what was at the time,

⁷¹ Blanco, H. (2008). Indigenous Peoples and Our Environment. *Canadian Dimension*

the only diamond mine in Canada and increases in social and economic development for the community. It is, however, important to note that even with constant and consistent involvement in the community, problems may still arise that cannot be resolved and situations that may have significant consequences for all parties involved.

Overall, all these three cases exemplify the absolute necessity of true participation of all individuals and parties involved. The exclusion of the local communities is an obvious violation of the standards set forth by the basic human rights principles. These cases demonstrate that the state remains an essential duty-bearer of the rights of its local populations and is obligated to help protect, promote, and fulfill the rights of these communities when they have been violated by a corporation's activities. The government's obligation to participate in finding legitimate solutions when communities are exploited is arguably the most fundamental element to achieving human rights.

Conclusion

As is exemplified in this report, the relationship between human rights and the mining industry is extremely complicated, with a variety of actors representing different conceptual understandings of rights. While it is beyond the scope of this endeavor, it is our intention to enable ProDESC to make more nuanced decisions and identify likeminded entities in its realm of the extractive industry and the applications and implications of a rights based discourse. From the corporate perspective, we can see that there is much talk and little action, but this scenario, rather than being a hindrance in ProDESC's work, should instead be seen as an area of opportunity for intervention, and

even more so, an indication that different perspectives (beyond those of the corporate sector) have a definitive value in the industry and can create real and positive changes in communities. Furthermore, as the industry changes (in language or action), so must ProDESC – continuing innovation in approach and action is integral to success.

As the case studies show, open communication between the local communities and the project sponsors is imperative, although difficult at times. Even constant and open communication can lead to unanticipated and negative outcomes, but an open dialog allows for proactive management with the community and can ensure that the community's concerns are heard, recognized, and addressed. National governments set the tone for the approach that extractive industry companies use with local communities. Governments are charged with managing the resources for the benefit of all their citizens. This sometimes creates a conflict of interest. Perhaps the most important turning point will come when FPIC is standardized and when a more thorough understanding of CSR is accepted by duty-bearers, local communities, and their advocates.

Recommendations:

Partnerships: Communities around the world have acted, and succeeded, in being recognized as relevant and important entities in the work of extractive industries. This can be taken further, and ProDESC can learn from the diverse stakeholders to better inform its own actions in the future and perhaps partner with international networks such as Oxfam International or other larger networking groups.

Language: *Language is essential, particularly from the different terms and conceptions employed by the industry, advocacy groups, and communities. Depending on the target, ProDESC can use the language best suited to state a claim or make a case.*

Sustainability and ownership mean different things to different entities, and with this in mind, a combination of flexibility (using the tools and language of the opponent to prove points and make cases), and rigidity (maintaining a community perspective of resource ownership), in an ever changing equation, can allow the organization to best tailor its approach to its desired outcome. Furthermore, the framing of an issue, be it in terms of working with likeminded organizations, employing the correct legal framework and language, or engaging corporations, is essential in achieving results and meeting goals.

It is also important to create clear, concrete definitions of the general terms and principles applied to the individual cases. As such an application of the HRBA framework is one strategy that could serve as a beneficial tool.

Action: *The lessons of other groups and communities can always be employed to allow for more nuanced and tactical understandings of situations, particularly those with histories regarding the same companies (IE, Rio Tinto, Vale, MMC, BHP, etc.) If tactics have worked in the past, they can be used again, with modifications for local laws and circumstances. This can work both ways however, as companies will learn and innovate too. Hence, learning from the past is just as important as preparing for the future.*

ProDESC, continuing their work as an innovative and flexible entity in Mexico (and beyond in the future), will be best suited for this approach in the maintenance of their dedication and responsiveness to the needs of communities around the globe.

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