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HANDBOOKS



# The Routledge Handbook on Meaningful Stakeholder Engagement

Edited by Karin Buhmann, Alberto Fonseca,  
Nathan Andrews and Giuseppe Amatulli



“How wonderful to have a book written with an unashamedly normative focus on meaningful engagement with affected stakeholders. And how necessary that this book is not just conceptually rigorous but immersed in practice and with a global reach. Kudos to the authors. I will be pulling *The Routledge Handbook on Meaningful Stakeholder Engagement* off my shelf for many years to come.”

**Professor Michelle Greenwood**, *Monash Business School,  
Monash University*

“This is one of the most welcome contributions to the business and human rights scholarship since the UN Guiding Principles themselves. The theoretical and practical assessments of a BHR concept as pivotal as meaningful stakeholder engagement in this book provides the sort of invaluable knowledge that every stakeholder needs for realizing the ideals of the UNGPs.”

**Professor Michael K. Addo**, *University of Notre Dame Law School;  
former Member of the UN Working Group on Business and Human Rights*

“The term ‘stakeholder’ burst onto the corporate responsibility scene in the mid-1980s. Widely used, but rarely theorized, this volume focuses the analytical lens on the concept itself. Brimming with ideas, the various chapters (and practice notes) explore the challenges associated with powerful actors categorizing affected stakeholders to ‘engage’ with them ‘meaningfully’. Readers are urged to reflect on the origins of these three concepts and the implications of their interaction across an expansive range of sectors and research settings.”

**Professor Deanna Kemp**, *The University of Queensland*



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# THE ROUTLEDGE HANDBOOK ON MEANINGFUL STAKEHOLDER ENGAGEMENT

Meaningful Stakeholder Engagement (MSE) is both a concept and a management approach, drawing on a combination of theoretical and applied knowledge areas (e.g., impact assessment, business and human rights, and stakeholder theory). MSE has become a key element of corporate sustainability risk-based due diligence as a process that responsible business enterprises are expected to apply to identify and manage harmful impacts on the environment and society.

Despite the obvious and growing relevance of meaningful stakeholder engagement, few publications have tried to synthesize the knowledge, academic literature, and practical experience within and around the concept and practices. This volume responds to that knowledge gap through the provision of comprehensive interdisciplinary perspectives. Embodying a rights-holder orientation, *The Routledge Handbook on Meaningful Stakeholder Engagement* emphasizes the importance of MSE for stakeholders who are or can be affected by activities driven by external actors, such as natural resource extraction or processing; infrastructure; development proposals, planning and implementation; and production for industry or consumption.

This handbook offers four thematic sections, all interdisciplinary in character, seeking to explore the multiple aspects of MSE. Moreover, a comprehensive introductory chapter explains key elements of the concept and causes for the current surge in expectations of MSE, including a rise in demands of risk-based due diligence. More than 40 international contributors combine theory and practice in chapters that discuss and elaborate the theory and practice of MSE. Uniquely, each section includes short practice notes based on experiences or dilemmas lived by practitioners or affected people, placing real-life situations into theoretical context. The concluding chapter draws up key insights from the chapters and practice notes, and casts a path for the future of MSE integrating values, norms, and practice.

Cutting across multiple disciplines including stakeholder theory, natural resource management, impact assessment, project management, ESG, responsible business, and global value chains, *The Routledge Handbook on Meaningful Stakeholder Engagement* will be an essential resource for scholars, researchers, developers, investors, affected people, civil society organizations, students, and others.

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# THE ROUTLEDGE HANDBOOK ON MEANINGFUL STAKEHOLDER ENGAGEMENT

*Edited by Karin Buhmann, Alberto Fonseca,  
Nathan Andrews and Giuseppe Amatulli*



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*This book is dedicated to all affected individuals and communities who are calling for meaningful stakeholder engagement – with a special thanks to the Doig River First Nation, Canada*



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# FOREWORD

The increasing role of non-state actors in international relations calls for stakeholder involvement in the design of regulation and governance to avoid disconnection from the real actors. In this context, the concept of multi-stakeholderism, while not new, has seen a revival, not least because of its prominent role in the implementation of the Responsible Business Conduct agenda. The UN Guiding Principles for Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct both emphasize the key role of meaningful stakeholder engagement in identifying, assessing, mitigating, and remedying negative impacts of business activities on people, planet and society.

However, the results of various attempts to bring the concept of meaningful stakeholder engagement to life over the past decade have been mixed: While multi-stakeholder consultations have become the tool of choice to give credibility and legitimacy to regulation and decision-making, a perceived lack of transparency in ensuring representativeness of selected stakeholders, uneasiness about the substance of consultation processes and, ultimately, their limited impact has led to frustration. This risks fostering disenfranchisement among affected people who do not feel adequately heard or represented. So how can we turn the concept of stakeholder engagement into a meaningful instrument?

This book provides some highly relevant and timely answers to the call for clarification of what constitutes ‘meaningful’ stakeholder engagement. By framing the discussion within the broader context of due diligence it achieves several objectives: First, it focuses on impacts on people, planet, and society with a thorough discussion of impact assessments. A second key feature of the discussion is that it includes lessons learnt from different geographical, cultural, and regulatory approaches and contexts. This presentation is further enriched by the addition of perspectives on stakeholder engagement in sectoral contexts where again the book – and the reader – benefits greatly from the diversity of disciplines and approaches of the contributing authors. A third major achievement is to bring the different parts of the kaleidoscope into place and to present a way forward. The presentation of some of the relevant research and theoretical perspectives provides a comprehensive picture of the current state of affairs and a starting point for a thorough discussion of what the future of meaningful stakeholder engagement might look like.

*Foreword*

In my role as Chair of the OECD Working Party on Responsible Business Conduct, I have seen the importance of meaningful multi-stakeholder engagement in the design and implementation of regulatory frameworks for the legitimacy of the Responsible Business Conduct agenda. This book takes us on a journey to not only discover the key current challenges for meaningful stakeholder engagement but also begin to explore what the future might look like. We gain new insights that allow us to see familiar concepts in a new light and thereby address some of the pertinent challenges facing our planet.

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# ABBREVIATIONS AND ACRONYMS

AMV	Africa Mining Vision
AU	African Union
BAPE	Bureau d'audiences publiques sur l'environnement
BCOGC	British Columbia Oil and Gas Commission
BCEAA	British Columbia Environmental Assessment Act
BCER	British Columbia Energy Regulator
BCSC	British Columbia Supreme Court
BHP	BHP Billiton
BRFN	Blueberry River First Nation
CABF	Commission of People Affected by the Fundão Dam
CBPR	Community-based participatory research
CBR	Community-based research
CCSI	Columbia Center for Sustainable Investment
CDOGM	Community-Driven Operational Grievance Mechanism
CEAA	Canadian Environmental Assessment Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEPAS	Centre Écologique De Port-Au-Saumon
CERALC	Responsible Business Conduct in Latin America and the Caribbean
CESDER	Centre for Rural Development Studies
CHRB	Corporate Human Rights Benchmark
CMV	Country Mining Visions
CNTAC	China National Textile and Apparel Council
COP	Conference of the Parties
CORE	Canadian Ombudsperson for Responsible Enterprise
CRTC	Canadian Radio-television and Telecommunications
CSDD	Corporate sustainability due diligence
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
CVM	Contingent valuation Methodology

*Abbreviations and Acronyms*

DD	(risk-based) due diligence
DPES	Public Defenders Office of the State of Espírito Santo
DRC	Democratic Republic of Congo
DRFN	Doig River First Nation
DRIPA	Declaration on the Rights of Indigenous Peoples Act
EASB	Environmental Assessment and Stewardship Branch
EEZ	Exclusive economic zone
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EJ	Energy Justice
ENGO	Environmental non-governmental organization
ESG	Environmental, social, and governance
ESIA	Environmental and social impact assessment
EU	European Union
EV	Electric vehicles
FGV	Getulio Vargas Foundation
FPIC	Free Prior and Informed Consent
GAC	Global Affairs Canada
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Development Agency)
GM	Grievance Mechanism
GNPC	Ghana National Petroleum Company
GRI	Global Reporting Initiative
GW	Gigawatt
HI	Historical Institutionalism
HRDD	Human Rights Due Diligence
HRRM	Human Rights Responsibility Mechanism
IA	Impact Assessment
IAA	Impact Assessment Act
IBA	Impact and Benefit Agreements
IC	Indigenous Communities
ICJ	International Commission of Jurists
ICMM	International Council on Mining and Metals
IEA	International Energy Agency
IEAC	Independent Expert Advisory Committee
IFC	International Finance Corporation
ILO	International Labour Organization
INCRA	Brazil's National Institute for Colonization and Agrarian Reform
IPCC	Intergovernmental Panel on Climate Change, United Nations
IR	Indian Reserve
ISDS	Investor-State Dispute Settlement
MAC	Mining Association of Canada
MPF	(Brazilian) Federal Prosecutor's Office
MSE	Meaningful Stakeholder Engagement
MSF	Multi-stakeholder forums
MSI	Multi-stakeholder Initiative
NAP	National Adaptation Plan

*Abbreviations and Acronyms*

NCP	National Contact Point
NDC	National Democratic Congress
NGO	Non-governmental organization
NPP	New Patriotic Party
NSURB	Nova Scotia Utility and Review Board
NTA	Native Title Act 1993 (Cth)
OCAP	Ownership, Control, Access, Possession
OECD	Organization for Economic Co-operation and Development
OGM	Operational Grievance Mechanism
OHCHR	Office of the High Commissioner for Human Rights
ORE	Canada's first Ombudsperson for Responsible Enterprise
PAE	Projeto de Assentamento Agroextrativista
PRI	Principles for Responsible Investment
PROCEDE	Program for the Certification of Ejido Land Rights
RAID	Rights and Accountability in Development
SCC	Supreme Court of Canada
SDG	Sustainable development goals
SDGs	Sustainable Development Goals
SEA	Environmental Assessment Service
SEIA	Environmental Impact Assessment System
SLO	Social license to operate
SQM	Sociedad Química y Minera de Chile
SSHRC	The Social Sciences and Humanities Research Council
T8FNs	Treaty 8 First Nations
TA	Thematic analysis
TC	Term of Commitment
TgiRDc	Ethiopian Textile and Garment Industry Research & Development Center
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDRR	United Nations Office for Disaster Risk Reduction
UNECA	United Nations Economic Commission for Africa
UNFCCC	United Nations Framework Convention on Climate Change
UNGP	United Nations Guiding Principles on Business and Human Rights
UNIDO	United Nations Industrial Development Organization
UNWG	United Nations Working Group
VPSHR	Voluntary Principles on Security and Human Rights
WHO	World Health Organization
WRCC	Western Region Coordinating Council
YUB	Yukon Utilities Board

# INTRODUCTION



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# 1

# MEANINGFUL STAKEHOLDER ENGAGEMENT

## The Concept, Practice and Governance

*Karin Buhmann, Alberto Fonseca, Nathan Andrews  
and Giuseppe Amatulli*

### Introduction

Meaningful stakeholder engagement (MSE) is a normative concept that describes ideal engagement practices with stakeholders. The concept and its practice are informed by a combination of theoretical and applied knowledge areas, such as impact assessment, organizational theory, stakeholder theory, business ethics, community development, natural resource management, law and governance, among others (see Kujala et al., 2022). In recent years, the concept has attained increased significance as a key element in responsible business conduct, in particular regarding the assessment and management of business-related harm to actual or potentially affected stakeholders. Affected stakeholders may be individuals or groups, such as communities, workers in a company or along its supply chains, members of a labour union, etc. Such groups are made up by individual stakeholders. Individuals may perceive impacts or risks of such impacts differently. This also applies within a group, where adverse impacts may affect different individuals in different ways.

The rise in attention paid to MSE is a result of society's growing frustration with public consultations and other forms of public participation in the decision-making processes of industrial, energy, infrastructure or other development projects and plans proposed or implemented by companies or governments. These participation processes are often found to be inadequate – both in terms of delivering outcomes that are perceived to be meaningful for those affected and in terms of the participation process itself (see e.g., Buhmann et al., 2021; Owen et al., 2022). In tandem, the emergence of a range of public, private, and hybrid normative frameworks on sustainable value chains and responsible business conduct are creating pressure for, and contributing to, the institutionalization of MSE. This process is further enhanced by a surge in legislation on risk-based corporate sustainability due diligence and impact assessment processes, which prescribe meaningful engagement with affected stakeholders in order to identify and manage social or environmental impacts that are, or may be, adverse to their situations or the environment. Calls for stronger involvement of affected stakeholders is also a trend in public protests, court cases and complaints through grievance mechanisms. For example, this trend is visible with regard to renewable energy projects and value chains for low-carbon energy in the Global South and Global North, including the Arctic.

Jointly, these developments and events are corroborating the need to understand what MSE is and what makes engagements truly meaningful, especially from the perspective of vulnerable, marginalized, or economically weaker stakeholders who may be adversely impacted by industrial, energy, infrastructure, and other development projects and plans. Contributing to providing such understanding, this international handbook draws on theoretical and practical insights and experiences from around the world. Responding to that diversity, the book considers a diverse range of individuals or group stakeholders as potentially or actually affected. After all, MSE can and should occur throughout the life cycle of policies and projects, informing the planning, implementation and monitoring phases.

While stakeholder engagement as such is not a novel field, a scarcity of knowledge on what exactly stakeholder engagement processes require to be meaningful and to be so from the perspective of those affected by impacts is an emergent field. This book contributes to this field by exploring and exposing MSE from a series of interconnected and complementary angles.

The focus on identifying impacts, needs, and concerns from the perspective of affected stakeholders has conventionally had regard to harmful impacts for individuals or communities (Götzmann, 2019; Harrison, 2010; Kemp & Vanclay, 2013). However, in the event of beneficial impacts, affected stakeholders may obviously benefit from such impacts. Whether focused on (minimizing) harmful impacts or (maximizing) benefits, this bottom-up angle has several implications. For example, it affects perceptions around impacts, reveals new information and communication needs and strategies between affected stakeholders and other actors, and shows what is required or expected for the output to be meaningful for affected stakeholders. As stakeholders comprise a highly diverse group within and across countries and continents, we believe that an enhanced focus on bottom-up perspectives will contribute to eliciting insights for theory and practice to the benefit of those affected, not only to those who cause the effects.

The concept of MSE has been shaped not only in the academic literature, but also, and perhaps more widely, in the ‘grey’ literature (e.g., white papers, technical reports, and civil society studies). Moreover, normative frameworks and guidance instruments adopted in recent years by international organizations, such as the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD), have played a major role in bringing MSE to the fore with an affected stakeholder orientation. Language on meaningful stakeholder consultations and engagement has been particularly strengthened globally with the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) (UN, 2011), which refer to meaningful engagement with affected stakeholders as part of the risk-based due diligence process. Since then, MSE with a similar understanding as in the UNGPs has made it into several other leading normative frameworks and guidance instruments setting out demands on the private sector and governments. Many refer directly to the UNGPs, others do so indirectly. Moreover, some refer explicitly to MSE, whereas others do so indirectly by deploying the term ‘due diligence’ in a sense where the objective is to identify and manage harmful impacts caused by the organization. Through their use of the term and shaping of organizational conduct they also contribute to the ongoing shaping of MSE.

While debates on meaningful stakeholder engagement occur in various fields within the social sciences and elsewhere, this handbook focuses on the context of socio-environmental management and governance, particularly when it involves implementation of projects, policies, plans, and programs, whether undertaken by business organizations, governments,

or other organizations. At an overall level but with variations across chapters, the book explores MSE as a concept and practice that can not only mitigate adverse social and environmental impacts and other harmful effects on sustainability and sustainable practices, but also maximize positive effects. One of the key driving questions of this handbook is: how can MSE serve to identify, mitigate, and manage risks and adverse impacts, and, at the same time, enhance positive impacts for stakeholders in the short and long term? This question is not meant to overlook what is wrong with prevailing manifestations of poor or ‘bad’ engagement; rather, we are driven by the goal of envisioning how the idea of *meaningful* can be an element that elevates ineffective and non-inclusive forms of stakeholder engagement to be effective and inclusive. Answers to this broad question are provided throughout this handbook by academic chapters and practice notes from a variety of geographical and decision-making contexts (see the last section of this chapter, that provides an overview of the handbook). That knowledge is useful for business managers, policymakers, regulators, scholars, civil society organizations, activists, and others who want to understand what makes stakeholder engagement meaningful.

To properly absorb the contents of the academic chapters and practice notes, it is important to set the scene. Therefore, the following four sections will introduce and elaborate on the concept, literature, and practice of MSE. The following section introduces a dual typology of stakeholders (affected and non-affected) that is relevant to understanding the concept of MSE, and explains the predominant focus on affected stakeholders. The surge of legislative demands on companies to exercise risk-based due diligence is driving a shift from a ‘nice-to-have’ response to MSE as part of a wider social expectation to a ‘need-to-have’ organizational practice for both private and public organizations. This turns the spotlight on MSE and the background for that surge, as described in the following section (Why MSE now, and why the emphasis on affected stakeholders?), which elaborates on the role played by the UNGPs, OECD guidance texts and other global governance instruments or frameworks for the current emphasis on MSE and the affected stakeholder orientation. The section that follows, “Distilling the concept of meaningful stakeholder engagement”, considers the individual and joint meaning of the three terms in MSE – meaningful, stakeholder, and engagement –, as well as the connection between the stakeholder and rights-holder terms. The section “Positioning MSE within the social science literature and normative instruments” contextualizes MSE in the literature and key normative frameworks or guidance instruments, examining impact assessment, organizational studies, global governance, and legal studies, as well as interconnections between those disciplines and related normative frameworks that all contribute to shaping MSE. The final section explains the handbook’s structure and briefly introduces each chapter and practice note.

### **A necessary Focus on Affected Stakeholders**

For the purposes of this book, stakeholders can be divided into two types based on whether or not they are adversely affected by projects and plans, or whether they are involved in causing the potential or actual impacts. Those who are at risk of being affected or are affected by adverse impacts – such as individuals or groups of workers, communities hosting mines or polluting factories, or residents in a settlement monitored by surveillance equipment – constitute ‘affected stakeholders’ (or ‘affected people’). They are the stakeholders for whom meaningful engagement is particularly important and, therefore, the key concern for this book. Often, affected stakeholders are also rights-holders (for example, in many situations in the



case of Indigenous Peoples but not limited to those), as elaborated below in the section on “Distilling the concept of meaningful stakeholder engagement”. The group of stakeholders who are not adversely affected or not likely to be adversely affected (named here as non-affected) comprise a wide range of actors. Typical examples of such stakeholders are managers, owners, or customers of a company, local or central governments, consultants providing expertise for impact assessments, investors, media, etc.

This dual typology of stakeholders is compatible with the definition proposed by R. Edward Freeman in his seminal 1984 work on stakeholders, which proposed the term to broaden the focus on an organization beyond those who own or lead it (shareholders in a publicly owned company). Freeman’s definition, which spurred the evolution of much stakeholder theory (Friedman & Miles, 2006), recognises any group or individual who can affect, or is affected by, the achievement of the organization’s objectives as a stakeholder for that organization (Freeman, 1984, p. 46). However, stakeholder analysis, in theory and practice, tends to focus on business partners, capital providers, employees, regulators, and media (Freeman, 1984; Friedman & Miles, 2006), rather than affected stakeholders. A large proportion of existing stakeholder literature is developed for a strategic business context. Even so, as evidenced by the uptake of the stakeholder term and understanding in responsible business conduct and with regard to public governance of infrastructure and other projects to identify and manage societal risks or harmful impacts, stakeholder theory can be read and applied in a broader context that also considers affected stakeholders and deployment of stakeholder engagement.

Given the emphasis on those at risk or actually affected, MSE can have particular relevance for vulnerable or marginalized people, e.g., children, Indigenous Peoples, women, rural and remote communities. That, on the other hand, also underscores the challenges posed to affected people by conventional consultation procedures – such as those frequently required in the context of environmental or social impact assessments – in order to allow them to claim and protect their rights and interests. As several chapters in this book show, people can be vulnerable and/or susceptible to risks or adverse impacts in many ways. Indigenous Peoples are often at risk to certain types of projects, e.g. those impacting their lands or traditional ways of making a living. In many other cases, those who are at risk or affected are not ethnically or otherwise distinct from mainstream society, but still suffer harm, such as for example rural communities affected by the 2015 collapse of the Samarco/Fundão Dam collapse in Brazil, which released large volumes of tailings that flooded their villages (Demajorovic et al., 2019).

Power disparities are often at play in regard to the causes for stakeholders becoming affected, and for engagement processed to be lacking in meaningfulness. In many societies, particular social or ethnic groups and those who lack digital literacy are also at risk of being left out of decision-making processes meant to be inclusive. This also puts them at risk of not being meaningfully engaged in decisions that may affect their lives and livelihoods. In other cases, education is not enough to prevent vulnerability: the Indigenous Sámi who live in Northern Fennoscandia in the northernmost part of Europe are generally educated at the same level as others in the countries of Norway, Sweden, and Finland. Yet the impact generated by wind energy and transition minerals mining on their traditional lands combined with a lack of meaningful engagement of the Sámi people, pose risks to their opportunities to exercise their traditional ways of sustaining themselves and their dependents.

Indeed, the pertinence of understanding and applying MSE in a global context is underscored by political, economic, and wider societal emphasis on a speedy ‘green transition’, also on a global scale. As demonstrated by several chapters in this handbook, that transition is causing a surge of economic activities in the energy and mining sectors, which through their

impacts on host-society individuals, communities, and other vulnerable stakeholders in Asia, Africa, Austral-Asia, Latin-America, as well as in particular Arctic parts of Europe and North America, underscore that, across the globe, local stakeholders are susceptible to social and environmental risks arising from the implementation of policies or specific projects.

The global character of MSE problems related to the transition to low-GHG energy is a unique opportunity to bring together insights and experiences from regions that are frequently analysed in isolation rather than across geographical locations. It also offers opportunities to connect the knowledge and experience on MSE in the mining sector, which has long been recognized to be problematic with regard to social and environmental impacts, to enrich MSE practices for mining of minerals for the transition. For example, the experiences of communities affected by energy and mining projects in Australia, Brazil, Chile, Canada, Greenland, Mexico, and the Indigenous Sámi in the very North of Europe speak to the significance of understanding commonalities and exploring how the strengths and approaches of particular groups can enrich those of others to the benefit of MSE.

Stakeholder engagement is often portrayed as practices with business organizations or government, but in an inherently top-down approach that may easily skirt the nuances and needs of ‘meaningfulness’ from the perspectives of affected stakeholders. Several studies have found that the practice of stakeholder engagement has been characterized by processes that are often out of touch with the experiences of affected people whose daily lives intersect with the activities of industry (Andrews, 2021a; Kepore & Imbun, 2011; Zoomers & Otsuki, 2017). Even after decades of working on this topic, R. Edward Freeman (2017), whose definition above (Freeman, 1984, p. 46) laid the groundwork for much of the later evolution of the field, has highlighted a series of tensions in stakeholder theory, including the challenge of broadly accounting for all stakeholders instead of only investors (see also Barney & Harrison, 2020; Freeman et al., 2020).

### **Why MSE Now, and Why the Emphasis on Affected Stakeholders?**

While MSE as a concept has a long and diverse legacy in the academic literature, as explained in the section on “Positioning MSE within the social science literature and normative instrument”, much of the current MSE emphasis in the literature and in operational instruments can be traced to the elaboration of risk-based due diligence provided by the UNGPs in 2011 and the subsequent spread of risk-based due diligence to wider sustainability governance instruments. The UNGPs got their cue from the introduction of the concept of human rights due diligence in a prior study, the UN ‘Protect, Respect, and Remedy Framework (‘UN Framework’) (UN, 2008a). The term risk-based due diligence was introduced with the 2011 revision of the OECD Guidelines for Multinational Enterprises, which applied the UNGPs’ human rights due diligence approach across a wider range of issue areas. This also helped spur the growth in MSE expectations regarding affected stakeholders beyond the UNGPs’ human rights focus, for example for environmental impacts.

The essence of risk-based due diligence concerns the identification and management of risks or actual harm to affected stakeholders. As a result, meaningful engagement is seen as an essential means to understand and address the concerns and needs of such stakeholders. As companies are expected, and increasingly required, to undertake due diligence in order to identify and manage actual or potential harmful impacts on human rights, the environment or other societal concerns, they also need to undertake meaningful engagement with stakeholders potentially or actually subject to risk or impacts.

Concerned with risks caused by the company to society, risk-based due diligence is distinct from transactional due diligence, which is concerned with risks “to” the company. Transactional due diligence is a well-known practice in regard to financial or legal liability risks. While both forms are concerned with risks, the direction of the risk-focus differs. The UNGPs and extensive studies (UN, 2008b) that informed the UN ‘Protect, Respect and Remedy’ Framework themselves draw on a wider literature on global governance, impact assessment, management and responsible business conduct, and stakeholder engagement (Buhmann, 2017). Reflecting that broad foundation, the UNGPs’ deployment of the term ‘affected stakeholders’ is aligned with Freeman’s (1984, p. 46) understanding of stakeholders, i.e. the broad understanding including any group or individual is affected by the achievement of an organization’s objectives (as well as those that affect it).

Indeed, our section on “Positioning MSE within the social science literature and normative instrument” suggests that the current distinction between affected stakeholders and ‘general’ stakeholders can also be traced to the UNGPs’ usage of the term ‘affected stakeholders’. It is therefore worthwhile to look at the role of MSE in relation to risk-based due diligence.

With the UNGPs serving as the key normative source, the risk-based due diligence approach has become widely adopted by several subsequent normative frameworks and guiding instruments on responsible business conduct. This includes the IFC Performance Standards (revision 2012), the OECD Guidelines for Multinational Enterprises (as of the 2011 revision) and the International Standardisation Organisation (ISO) 26000 Social Responsibility Guidance Standard (launched in 2010). Since MSE is an inherent part of due diligence it is also expected to be implemented under those instruments. MSE has also more indirectly influenced instruments, such as the Global Reporting Initiative (GRI) stakeholder engagement and materiality analysis protocols, the Stakeholder Engagement Plan of the World Bank (2016), and some due diligence guidance documents issued by the OECD.

The OECD’s (2017) detailed guidance on meaningful stakeholder engagement in the extractive sector as part of due diligence is also an important source of elaboration on MSE. Other guidance documents, such as *Beyond Consultations* (2022), advance the focus on certain types of vulnerable stakeholders. Moreover, the risk-based due diligence approach is applied by legislation adopted by various jurisdictions in recent years. This, too, assumes that actors required to undertake such due diligence undertake and apply MSE.

MSE is contained in the UNGPs’ explanation of the due diligence. Due diligence is set out as a management process comprising several steps, starting with an assessment of actual or potential adverse impacts with which the organization may be involved either through its own activities or as a result of its business relationships.<sup>1</sup> The impact assessment process should involve meaningful engagement ‘with potentially affected groups and other relevant stakeholders’ (Guiding Principles 17 and 18). From the context, explanatory commentaries and the regular use of ‘engagement’ in the UNGPs, as well as elaboration provided by the UN’s Office of the High Commissioner for Human Rights (OHCHR), it is clear that references to ‘consultation’ are not limited to legally required consultations but rather assumes a dialogue focus (compare OHCHR, 2012, p. 8). The dialogue emphasis is also underscored in OECD’s guidance texts on due diligence (OECD, 2017, 2018). Moreover, it is clear from the UNGPs, as well as OECD guidance documents, that the process has a clear objective of understanding concerns and impacts from the perspective of those potentially or actually affected (see Mestad, 2018). The OECD’s general due diligence guidance describes meaningful stakeholder engagement as an ongoing and responsive process characterized by two-way communication, and relying on the good faith of both sides (OECD, 2018, p. 49). Accordingly, companies

need to engage to understand the impact that their activities have on specific stakeholders, and to do so in a way that is meaningful to the stakeholders in terms of both process and outcome. The underlying rationale is that without engaging with these stakeholders in a manner that is meaningful to them, and with them, an impact assessment as well as subsequent steps to address and, if necessary, redress harm will be incomplete in terms of the necessary understanding and appreciation of risks or harm from the perspective of those affected. The 2023 update of the OECD Guidelines further underscores and elaborates on MSE as an aspect of due diligence: The Guidelines define MSE as a key component of the due diligence process, sometimes even constituting a right in and of itself (OECD 2023, commentary 28). They observe that companies should “Engage meaningfully with relevant stakeholders or their legitimate representatives as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with respect to activities that may significantly impact” (OECD 2023, chapter II, A.16). It is clarified that relevant stakeholders are persons or groups, or their legitimate representatives, who have rights or interests related to the matters at stake that are or could be affected by adverse impacts associated with an enterprise’s operations, products, or services; and that societal stakeholders to be considered in various contexts include the local community and those adversely affected or potentially adversely affected by governmental or business activities (OECD 2023, commentary 2 and 28). The Guidelines also observe that MSE is important for the sake of understanding and considering distinct and intersecting risks, including those related to individual characteristics or to vulnerable or marginalized groups (OECD, 2023, commentary 50).

Several due diligence laws adopted in recent years, as well as new bills and proposals, refer explicitly or implicitly to the due diligence definitions in the UNGPs and OECD Guidelines as the normative sources for the term. For this reason, those due diligence processes also assume MSE in that sense. In 2023, Canada adopted a due diligence law targeting forced labour and child labour in supply chains. Prior to that, several individual countries in Europe (France,<sup>2</sup> Germany,<sup>3</sup> Norway<sup>4</sup> and the Netherlands<sup>5</sup>) have introduced national mandatory due diligence for certain types of companies. At the time of writing this chapter, the European Union (EU) is expected to introduce mandatory due diligence for human rights and the environment for large companies operating in or out of the EU, under the name of ‘corporate sustainability due diligence’ (EU, 2024). Meaningful engagement with stakeholders, in particular affected stakeholders, forms part of the due diligence demands on companies, who are required to engage meaningfully with stakeholders at various stages of the due diligence process. By covering supply chains, the EU requirement will *de facto* be passed on to many companies outside the EU, including some smaller and medium-sized enterprises. It is expected to have operational implications for many such organizations in regard to their due diligence and therefore their MSE processes. The EU has already introduced due diligence requirements for certain minerals as well as forestry products,<sup>6</sup> measures also to some extent are passed on to suppliers outside the EU. Moreover, EU law requires many companies and financial institutions to inform on their risk-based due diligence processes in regular non-financial reports.<sup>7</sup> By referencing the UNGPs and OECD Guidelines as ‘minimum safeguards’, the EU’s taxonomy for sustainable finance also requires companies to have risk-based due diligence in place.<sup>8</sup>

In Brazil, a bill pushing for mandatory human rights due diligence was introduced to the National Congress in 2022.<sup>9</sup> As this shows, there is a global trend to introduce mandatory due diligence for companies’ sustainability impacts. A common feature to these initiatives is that they extend the due diligence through the supply chain through requirements on the companies directly covered by the due diligence obligation, with the intention that they cascade on to

supplier companies and other business relations. As a result of this and the global integration of trade and value chains, MSE becomes increasingly relevant to companies everywhere, such as agricultural, mining, textile, or timber companies producing for markets having mandatory due diligence laws, or to business relations that are involved in such value chains.

Through requirements on the companies to extend due diligence through their global value chains, the due diligence application affects suppliers and other business relations in third countries. Many of those are closer to potentially or actually adversely affected stakeholders, such as host communities for transition mining or employees in apparel value chains, than the company in the country mandating due diligence. The effect of this is that companies need to understand and practice due diligence and its sub-elements, including MSE.

We recognise that the legitimacy of individual countries or regions legislating in a manner that *de facto* imposes requirements on actors elsewhere can be questioned (see also Buhmann & Nathan, 2019; Lichuma, 2023a, 2023b). However, for the current purposes, the fact is that due diligence laws are pushing the pertinence of knowledge and practice of MSE across the globe.

Companies subject to legal requirements on due diligence may transfer the due diligence requirements through contractual requirements, which in most cases are subject to legal enforcement. But even if they do not, companies upstream the value chain may suffer consequences if they do not exercise MSE as part of their due diligence. Some downstream companies respond to inadequate exercise or documentation of due diligence by bringing business relations to an end (even though the UNGPs and OECD Guidelines encourage the downstream company to engage in raising due diligence with the upstream business relation and only bring the relationship to an end if such steps do not bring about the necessary change, see UN, 2011, Guiding Principle 19 with commentary; OECD, 2023 Chapter II, commentary 25). Outside of contractual relationships, companies may also suffer loss of social license to operate if they disregard MSE as part of due diligence (Buhmann, 2015; Prno & Slocombe, 2012; Wright & Lehr, 2006).

Accordingly, neglect of exercising due diligence and therefore of adequate MSE may carry legal, financial, and reputational consequences for a company. Even where due diligence is not legally required, the process is necessary for a company to know about the risks or adverse impacts with which it may be involved, and to demonstrate the steps it takes in response. Failure to do so can subject the company to criticism and loss of legitimacy with key stakeholders, ranging from those actually or potentially affected (such as host communities or employees), to buyers, consumers and investors.

As a practice, MSE in principle concerns all companies and, by implication, governments and public and civil society organizations that expect, require, or monitor the actions and impacts of those businesses. This too can be traced to the UNGPs. While some other global governance frameworks for responsible business conduct, such as the OECD Guidelines as well as national due diligence laws, only apply to some types of companies, the UNGPs – and therefore due diligence and MSE – apply to all business enterprises, regardless of form, size, country of domicile or countries of operation.

### **Distilling the Concept of Meaningful Stakeholder Engagement**

The MSE concept is comprised of three terms – meaningful, stakeholder, and engagement – each taking on a particular nuance in the context of the other two. As shown in Figure 1.1, and further discussed in the following paragraphs, each of these terms has specific traits that have been recurrently emphasized in the literature.

Meaningful	Stakeholder	Engagement
<ul style="list-style-type: none"> <li>- Genuine (no tick-boxing)</li> <li>- Inclusive</li> <li>- A process and an outcome</li> <li>- Technically sound</li> </ul>	<ul style="list-style-type: none"> <li>- Beyond shareholders</li> <li>- Person, group or organization</li> <li>- Who can affect or is affected</li> </ul>	<ul style="list-style-type: none"> <li>- Beyond consultation</li> <li>- Interactive</li> <li>- Two-way</li> <li>- Adaptive</li> </ul>

Figure 1.1 Key traits of the terms that make up the concept of meaningful stakeholder engagement

Source: Created by the authors of this chapter.

Stakeholder engagement has a long and rich legacy in the academic literature. However, the explicit combination of the term *meaningful* with stakeholder engagement in the UNGPs has contributed to underscoring the significance of the engagement process being meaningful from the perspective of those with whom it takes place (Buhmann, 2021), and, as noted above, in particular stakeholders that are or may be adversely affected by a project, policy, etc. This means that an impact assessment process should be fully designed to take departure in, account of, and respond to the needs for data, explanations, and discussions based on the concerns, needs, and livelihoods of actually or potentially affected people, from their own perspectives. Unless the engagement process equips those actually or potentially affected with the relevant knowledge as well as support for interpreting it and placing it into their own context, it is likely not meaningful. This bottom-up perspective is additional to the multiple others that are presented in the literature review presented further below.

Underscoring the bottom-up aspect, *engagement* in MSE presupposes a dialogue that actively and extensively involves those affected by an activity (OECD, 2023; OHCHR, 2012). Accordingly, engagement is expected to go beyond the formal limits of consultations as processes required by law with regard to environmental, social, strategic, and other types of impact assessment. The extent and form of consultations in the context of impact assessments are regulated in many ways and levels in diverse countries, with great variety (Andrews & Essah, 2020; Glucker et al., 2013; Nenashva et al., 2015; O’Faircheallaigh, 2010; Seck, 2016). Consultations are often mandated in the preparation and review of impact assessment statements or reports. The implementation, however, has long been approached as a ‘tick box’ exercise, aiming at fulfilling requirements in the relevant legislation rather than to actually engage (Whicher, 2021). Consultations in the sense of a process mandated by law, such as impact assessment legislation, therefore is typically too narrow to provide for MSE. To ensure that consultations help to prevent, mitigate, and remedy adverse impacts, law and policymakers increasingly regulate engagements throughout the impact assessment process, from the early phases of project planning all the way through monitoring, auditing, management, and finally decommissioning. MSE is necessary to ensure a truly meaningful process throughout the lifecycle of projects and plans, and not just compliance with the formal legal demands.

The *stakeholder* term originated in the business ethics literature, as a societally inclusive alternative to shareholders/stockholders. In the seminal sense proposed by Freeman (1984), stakeholders include economic business relations as well as communities and others who are further removed from the organization. Following the definition of a stakeholder as any group or individual who can affect or is affected by the achievement of the organization’s objectives (Freeman, 1984), Freeman with William M. Evan recognized that communities as

stakeholders have a claim to participate in decisions that substantially affect their welfare and to have their human rights respected (Evan & Freeman, 1993). Although the stakeholder literature does not refer to rights-holders by that term, it therefore does include rights-holders who are individuals or communities whose human rights are at risk or have been abused.

We recognise that the use of the term *stakeholders* is contentious with some rights-holders, in particular some Indigenous groups.<sup>10</sup> However, in the context of MSE it is also worth recognizing that the use of *stakeholders* was introduced in the business and human rights context with the objective of having a solid imprint with business managers in order for the interests and rights of those (at risk of being) adversely affected to become integrated throughout management processes (Buhmann, 2017). This does not mean that everyone else should think like business managers; on the contrary: the point is to make business managers take the interests, needs, concerns, and, of course, rights of others seriously, and to integrate that into the functioning of the business organization (Buhmann, 2017). We also recognize that, in the particular contexts of some countries and regions, the term *stakeholder* is seen as an inherently top-down construct, biased towards the interests of governments and business enterprises. In such contexts, scholars and practitioners, while using and practicing the essence of MSE, avoid using the term *stakeholder*, favouring other terms, such as *public* or *people*.

Indeed, the Office of the High Commissioner for Human Rights (OHCHR, 2012) has explained that the UNGPs' usage of the affected stakeholder term specifically refers to an individual *whose human rights has been affected by an enterprise's operations, products or services* (emphasis added), and that 'stakeholder engagement' refers to 'an ongoing process of interaction and dialogue between an enterprise and its *potentially affected stakeholders*' (OHCHR, 2014, emphasis added). The OHCHR (2012) distinguishes clearly between affected stakeholders (i.e., rights-holders, when the harm affects human or other rights), and 'shareholders and other interested parties'. In setting out guidance on MSE, the UNGPs' observation that this should be part of the process to 'identify and assess any actual or potential adverse human rights impacts' and should be with 'potentially affected groups and other relevant stakeholders' highlights the primary focus on rights-holders. The UNGPs' integrated commentary notes that business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at a heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men (commentary to guiding principle 18). As part of this process, businesses should seek to understand the concerns of potentially affected stakeholders by engaging directly in a manner that takes into account language and other potential barriers to effective engagement (OHCHR, 2014). In situations where that is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society (OHCHR, 2014).

The focus on rights-holders is also evident in the 2023 update of the OECD Guidelines, which note that

Relevant stakeholders are persons or groups, or their legitimate representatives, who have rights or interests related to the matters covered by the *Guidelines* that are or could be affected by adverse impacts associated with the enterprise's operations, products or services.

Although perhaps seemingly counter-intuitive, being recognized as a stakeholder may provide wider opportunities for involvement than being acknowledged as a rights-holder: where the relevant need or concern is not formally established as a right, a purely rights-holder orientation could become an impediment for having that need/concern recognized and voiced and to those who harbour it being involved in the stakeholder engagement process. As what constitutes a ‘right’ is governed by many national and international hard and soft law instruments with great variety as to national recognition, the implications are potentially far-reaching. Given that a hard-law basis in national law is often the *de-facto* cut-off line for project proponents to recognize a right and therefore rights-holders, it is simpler for them to reject a claim to being a rights-holder than a claim to being an affected stakeholder. However, if affected stakeholders succeed in making their concerns voiced, this may pave the way to having those concerns considered and respected, even if the basis for the relevant right is in soft law or even a moral or other foundation that has not yet made its way into soft law.

The use of the term *stakeholders* in the UNGPs and the UN’s ‘Protect, Respect and Remedy’ Framework study reflects a rationale that was pragmatic at the time when the main challenge was to build a general recognition of businesses having responsibilities for their human rights impacts. The deployment of this term was to drive and mainstream the consideration of human rights into operational business functions, such as supply chain management and investor relations (Buhmann, 2017). As managers are trained to think of stakeholders and recognise their significance for risk management, this was intended to advance processes of assessment of impacts on rights-holders and other vulnerable stakeholders. It is clear throughout the UNGPs and UN Framework report that the focus is, indeed, on affected stakeholders being holders of human rights (and therefore rights-holders). In recent years, the rights-holder term has become more commonly used in contexts where the pertinent interests of affected stakeholders are human rights. For example, when referring to stakeholders whose human rights are at risk, the OECD applies ‘rights-holders’ in some of its due diligence guidance instruments (OECD, 2017, 2019). To sum up, the original use of *stakeholders* in MSE speaks to the recognition of rights-holders in Freeman’s (1994) and Evan and Freeman’s (1993) conceptualization of the term, and the deployment of the stakeholder term is intended to advance the recognition of rights-holders and respect for their rights.

### **Positioning MSE within the Social Science Literature and Normative Instruments**

#### *General Overview*

As a concept, MSE has neither a ‘date of birth’ nor a single influential definition. For decades, scholars and practitioners have been calling for more meaningful engagements in development decision-making and sustainability-related projects and plans. While doing so, they may use different terminology, such as effective public participation, empowered citizen participation, inclusive and transparent consultation, and meaningful participation, among others. While there exists a voluminous scholarship on company–community relations (Greenwood, 2007; Kepore & Imbun, 2011; Kujala et al., 2022; Mercer-Mapstone et al., 2018), a comprehensive literature on what makes stakeholder engagement meaningful – and what sort of engagement with stakeholders that entails – is lacking.



Systematic searches in research databases, such as Scopus and Web of Science, reveal that MSE has become a conceptual trend in the literature since the early 2000s as an assumed part of environmental, social, human rights, and other types of impact assessment processes. Arguably, the proliferation of the concept of MSE in both academic and grey literatures is a result of the growing perception that existing participation and engagement techniques often reinforce the *status quo* instead of promoting more equitable and sustainable development. A further argument that can be made is that the continuously rising interest in MSE in recent years is a result of the emergence of operational normative frameworks (such as the UNGPs or OECD Guidelines), associated guidance documents and national laws, of which some have been launched in response to frustrations with current participation practice. However, our literature searches suggest that studies on what makes stakeholder engagement *meaningful* are still limited.

People and organizations who are involved in stakeholder engagement may hold different views on what meaningfulness implies. The academic literature does not deal much with this particular issue, especially from the perspective of affected people. The topic appears to be largely addressed indirectly rather than directly. For example, Van der Ploeg and Vanclay's (2017) proposal of a human-rights-based approach to project displacement and resettlement is imbued with an emphasis on the importance of affected people being involved in ways that are meaningful to them in order for them to uphold their livelihoods, jobs, lands, and general quality of life; and on the outcomes of involvement also being meaningful to those affected. As part of this, the 'meaningfulness' of financial and other forms of compensation is a major issue, although not addressed in those terms. Similarly, Hansen et al.'s (2018) account of social and environmental impact assessments in the Arctic addresses the importance of meaningfulness in engagement explicitly only in a couple of paragraphs mid-article, while the substance of the article deals with the risks to both communities and projects if engagement is not meaningful to affected people. Despite the relatively highly developed legal frameworks for impact assessment in most Arctic countries (Nenasheva et al., 2015), Hansen et al. (2018) observe an imbalance between formal consultation requirements and actual meaningful engagement. Ironically, the rise in project applications and the size and complexity of many projects combine with formal requirements for consultation to place strains on the capacities and resources of Arctic communities to meaningfully engage in impact assessments of projects that may affect them, as well as to remain engaged during a project period (Hansen et al., 2018; Kwiatkowski et al., 2009; see also Noble & Hanna, 2015).

Several authors recognize that processes for engaging affected stakeholders in decision-making is important for ensuring an informed basis for decision-makers to make balanced decisions that avoid unnecessary squashing of some interests (Abele & Kennedy Dalseg, 2015; Forester, 1989; Parenteau, 1988; Pearce et al., 1979; Tauxe 1995; Webler et al., 1995). However, it remains unclear what exactly this means in terms of what constitutes a good process for involving affected stakeholders, and how to turn formal requirements and top-down approaches into meaningful engagement from the perspective of local communities (Buhmann et al., 2021; Skjervedal, 2018).

Definitions with emphasis on the meaningfulness of engagement have been proposed by normative frameworks, associated guidance, and the broader grey literature. The 2023 update of the OECD Guidelines as well as OECD (2017) Guidance on MSE note that MSE refers to 'ongoing engagement with stakeholders that is two-way, conducted in good faith by the participants on both sides and responsive to stakeholders' views' (OECD, 2023, commentary 28). Going further, they also observe that to ensure stakeholder engagement is meaningful and

effective, it is important to ensure that it is timely, accessible, appropriate, and safe for stakeholders, and to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalization (ibid.). Multiple other organizations and guidance frameworks propose their own versions of such processes, with variations around the overall theme and how to obtain the objective (see Wilson et al., 2016). Common to these lists of steps for an engagement process to be meaningful is an emphasis on the process starting early and inclusiveness of affected people.

Although Freeman's (1984) seminal definition of stakeholders explicitly recognizes both the capacity to affect, and to be affected by, the activities of an organization, much of the literature does not clearly distinguish between affected and non-affected stakeholders. Consistent with the MSE emphasis on the interests and needs of affected stakeholders, we infer from the literature an implicit recognition that expectations of meaningfulness are directly related to whether a stakeholder is affected, or non-affected. Evan and Freeman (1993) implicitly elaborate the special needs of affected stakeholders through an elaboration of the rights and claims of communities that are at risk or actually harmfully impacted by business activities. Chevalier and Buckles (2008) provides examples of categorizations of 'capacity to affect' as well as 'capacity to be affected'. Some stakeholders can have hybrid natures in such categories, i.e., they can be affected and non-affected at the same time, depending on what is at stake (social or environmental issue) (e.g., Lindenberg & Crosby, 1981; Mitchell et al., 1997). Some stakeholders can also be affected and, at the same time, be affecting, again depending on the issue at stake and their level of legitimacy, power, and urgency in the specific context (Mitchell et al., 1997). Combined with the growing emphasis in normative frameworks and grey literature on 'affected stakeholders' it is possible to establish that the more stakeholders are at risk of or actually affected by adverse impacts, the greater the need for the engagement to be meaningful from the perspective of those stakeholders.

### ***Law and Participation Rights***

In the legal context, MSE is closely related to rights to participation (Mestad, 2002; OECD, 2023, commentary 28). Such rights are recognized in international human rights law and in the national constitutions (highest laws) of multiple countries. At the same time, the effectiveness and respect of rights to participation encounters significant challenges, not least in contexts involving transnational business operations. With regard to international law, a key challenge arises because international law remains limited to recognizing only states as duty-bearers (Buhmann, 2017). While international law may, in principle, establish binding obligations for private actors such as companies, the political will among states – who are the international law-makers – has so far been limited regarding establishing duties pertaining to their social impacts and impact assessment processes, including risk-based due diligence and, therefore, MSE. Even efforts that have been going on since 2014 to establish the 'legally binding treaty' on business and human rights appear (at the time of writing) to opt for a model that will create international duties only for states, in the expectation that states will turn those into obligations onto business enterprises within their jurisdictions, through their national law. With regard to national law, whether established at constitutional level or in statutes, the reach of legal provisions is typically limited to the territory of the legislating country.

Notwithstanding these challenges, important rights of relevance to MSE are recognized in international law. The right to participate is the juridical corollary of stakeholder

involvement as discussed in the impact assessment, organizational as well as political science literature. It may be considered an extension of the human rights to participation in public decision-making affecting one's life (Mestad, 2002). Unlike the rights to Free, Prior and Informed Consent (FPIC), which, as explained below, can so far be claimed as a right by Indigenous Peoples, human rights to public participation in decision-making applies to everyone and can be claimed by everyone. The Universal Declaration on Human Rights and some other international instruments provide for rights of citizens to take part in the government of their country or the conduct of public affairs, directly or through freely chosen representatives. More recent international law instruments have expanded the understanding to apply to decision-making on issues affecting the lives of the individual, such as environmental or health issues (Buhmann, 2023; Seck, 2019).

In some countries, Indigenous Peoples have constitutionally protected rights.<sup>11</sup> However, in many other areas, Indigenous Peoples struggle to have their rights recognised at the national level. That is so despite important international law instruments, especially the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organisation's (ILO) Indigenous and Tribal Peoples Convention (No. 169) recognising that Indigenous Peoples have special rights to being involved and having a say regarding decisions affecting their lives and lands. UNDRIP recognises the right to 'free, prior and informed consent' (FPIC) and (Cambou, 2019), for instance, posits that it augments a democratic understanding of self-determination while also strengthening the rights of Indigenous Peoples. However, as an international declaration, UNDRIP is soft law and therefore primarily provides guidance which is not binding for governments and business organizations alike. Canada stands out by having incorporated UNDRIP explicitly into national law at the federal level (Government of Canada, 2023) and, before that, at the provincial level (Government of British Columbia, 2021). ILO's Convention No. 169 uses different terms that still invoke consent, noting that the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development; and that they shall participate in the formulation, implementation, and evaluation of plans and programs for national and regional development which may affect them directly (Article 7). However, being an international treaty, ILO 169 is only binding on a relatively low number of countries that have acceded to the convention.<sup>12</sup> This reduces its effectiveness and reach.

According to the UNGPs, the International Bill of Rights<sup>13</sup> and ILO fundamental conventions<sup>14</sup> form the minimum base line for the corporate responsibility to respect human rights, but only the minimum. Depending on context, companies may need to apply additional standards to respect the human rights of individuals belonging to specific groups, such as Indigenous Peoples. The participation rights of Indigenous Peoples, recognised by ILO Convention No 169 and UNDRIP, are obvious additional standards for companies whose activities involve operating in areas with Indigenous or tribal peoples (Buhmann, 2018b; OECD, 2018; OECD National Contact Point (NCP) of Sweden with NCP of Norway, 2016).

Whereas UNDRIP and ILO Convention 169 are significant in recognising the rights to participation for Indigenous (and in the case of ILO Convention 169 also tribal) peoples, social, environmental, and wider sustainability risks are also relevant to a large number of communities around the world, who are not Indigenous. Vulnerability is not conditional on being Indigenous. There are multiple examples of communities who are part of the majority population in a country being adversely affected by infrastructure, mining, energy,

agricultural, or other projects. In several cases, the situation of those communities is even more vulnerable than Indigenous or tribal peoples because they do not have resort to the special rights recognised by UNDRIP or ILO Convention 169. Indeed, the OHCHR (2014) recognizes women, minorities, migrants, people with disabilities among potentially people at risk due to pre-existing marginalization or exclusion from society, as well as children, who may also be vulnerable in certain circumstances and require special protection.

This underscores the importance of MSE as a concept and an ideal practice: as is clear from the above, MSE applies to all affected people, individuals, and communities, whether Indigenous or members of the mainstream population in a country. The right to participation is based on a similar recognition of all individuals being awarded that right, as a matter of principle. An elaboration of MSE can contribute to the understanding of how the right to participation can be implemented, meaningfully, in diverse contexts.

As a form of international soft law applying to governments as well as companies, the UNGPs have served to frame impact assessment and management, as well as grievance handling in multiple contexts. It follows from the UNGPs that affected stakeholders should have access to grievance mechanisms to consider their concerns and harm incurred. Such mechanisms include judicial institutions like courts; state-based mechanisms without a judicial mandate, such as National Contact Point (NCP) for the OECD Guidelines; and operational-level mechanisms, set up at the company or sector/industrial level. Several chapters address these issues, as outlined at the end of this chapter.

### **Impact Assessment**

Impact assessment is a process (mandatory in many countries) that requires developers to assess and report environmental, human rights, wider social and other forms of impacts related to construction, extractive resources, energy generation, production, and a range of other infrastructure and economic activities (Fonseca, 2022). Meaningful stakeholder engagement has important connections to impact assessment, in particular to *social impact assessment* practice and theory, conducted on its own or within the broader family of impact assessments. Social and environmental impact assessments have long been deployed to identify and manage the impacts of (mostly large) development projects before, during, and after operations (Hansen et al., 2018). Social impact assessment refers not only to processes undertaken in practice, but also to the sub-stream of impact assessment research.

Within the impact assessment literature, some scholars recognize that there is a cross-cutting need to assess the social consequences of projects as they are often intertwined with environmental and economic effects (Götzmann, 2019; Hegmann et al., 1999). Emergent scholarship on the impact assessment processes required under risk-based due diligence draws on theory and methods for environmental, social, and human rights impact assessment (Götzmann, 2019; Harrison, 2013). Studies note that assessments of human rights impacts should be contextual and relevant to the needs of vulnerable communities and other groups (Götzmann, 2019). In line with general social impact assessment methods, the process should be participatory (Brew & Lee, 1996; Esteves et al., 2012; Owen & Kemp, 2013). Yet, other studies indicate that impact assessment processes tend to be dominated by the values and organizational approaches of investors or other companies driving the process (Esteves et al., 2012; Zoomers & Otsuki, 2017). This suggests a systemic bias in favour of top-down approaches to stakeholders rather than the community perspective (Andrews, 2021a, 2019a; Andrews & Essah, 2020; Maher & Buhmann, 2019).

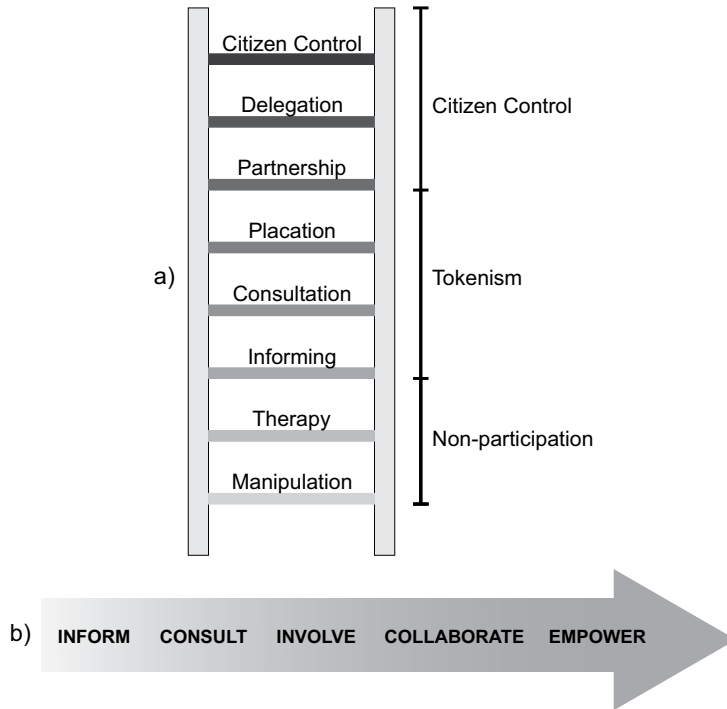


Figure 1.2 The linear spectrums of citizen or stakeholder empowerment proposed by Arnstein (a) and IAP2 (b)

Source: Arnstein (1969) and IAP2 (2023).

One of the recurrent themes in the EIA literature is the necessary level of empowerment of affected people. The seminal work in this area by Arnstein (1969) emerged at the same time as EIA. Arnstein likened the extent of agency afforded to participants as steps in a ladder. At the lowest rungs, participatory events are designed to placate the public (see Figure 1.2). At the highest rungs, participatory processes are designed to share decision-making power with those involved. The International Association of Public Participation (IAP2, 2023) later revised Arnstein's spectrum of participation, reducing from eight to five levels, including: inform, consult, involve, collaborate, and empower (Figure 1.2). At the lowest level, inform, the goal is to provide the public with the necessary information to understand the topic. At the empowerment stage, the public is given the final say in the decision-making process. Each stage includes commitments to the participant designed to clearly communicate how the goal will be implemented.

The impact assessment literature has a long history of investigating the practical and normative challenges of meaningful engagements (Glucker et al., 2013; Stewart & Sinclair, 2007). Engagements with Aboriginal and Indigenous communities have long been studied in various parts of the world (Hanna et al., 2014; Ruwhiu & Carter, 2016; Udofia et al., 2017). Another recurrent topic is the necessary conditions for meaningful engagements, particularly in green-field projects, i.e., projects in remote locations that may affect vulnerable rural communities and Indigenous Peoples (Solitare, 2005). More recently, scholars have turned their attention to the proliferation of virtual, digital, and remote approaches to public participation in impact

assessment, which may come with unclear trade-offs (Sinclair et al., 2017). Gains in efficiency through IT-based communication may also come at the cost of clarity and depth of engagements.

Overall, the impact assessment literature tends to criticize existing public participation practice and call for more meaningful approaches. But making engagements more meaningful is no easy task, as the quality of engagements is affected by multiple factors, such as the interdependence between the various types of participation techniques that take place throughout the impact assessment process (O’Faircheallaigh, 2010), the different information needs of stakeholders (Stewart & Sinclair, 2007), the many regulatory and cultural barriers to influencing decision-making (Fonseca & Gibson, 2021), and the growing hegemony of neoliberal discourse that tends to promote public participation through the narrow lenses of procedural efficiency (Bond et al., 2020). To overcome existing problems, scholars have long been proposing sets of principles or best-practice criteria for stakeholder engagements in impact assessment (e.g., André et al., 2006). Yet, such generic recommendations at times can be vague or not comprehensive enough to be valid in particular cases and jurisdictions. ‘One-size-fits-all’ approaches to MSE are not only inappropriate but can also be potentially misleading. Context matters a lot in impact assessment and its many opportunities for meaningful engagements. Therefore, meaningfulness must come with context-dependent solutions.

The literature on impact assessment tends to consider impacts on people or the environment, counting on individuals or civil society organizations to express concerns. This typically presumes concerns with impacts that directly or indirectly relate to humans. More recently, attention is starting to be paid to nature as a stakeholder in its own right, subject to impacts in its own right and with a claim to having its interests and needs represented and taken into account.

### **Management and Organizational Studies**

Several stakeholder theories have been developed within the fields of management and organizational studies. Taking diverse foci, from stakeholder ethics to instrumental approaches, stakeholder theories in management and organizational studies typically address stakeholder engagement from the perspective of how the practice may benefit the organization, such as a company (Friedman & Miles, 2006). For example, a well-designed community engagement strategy has been found to be able to advance a company’s social legitimacy and help it manage risks related to its social impacts (Carey et al., 2007; Lowndes et al., 2001). Some management and organizational research also consider benefits that communities may derive from business-driven engagement, such as jobs, professional and other trainings, as well as opportunities to shape projects (Bowen et al., 2010; Mitchell et al., 1997; O’Regan & Oster, 2000). This literature makes little use of the term ‘meaningful’, and indeed tends to take a top-down approach or generally overlook the effects on and involvement of affected stakeholders.

Based on a comprehensive literature review, Bowen et al. (2010) identify three overall categories of business–community engagement: transactional (with the lowest degree and intensity of dialogue and collaboratory engagement), transitional, and transformational (displaying the highest degree and intensity of dialogue and collaboratory engagement). Transformational engagement comes closest to what one may consider as ‘meaningful’. It is described as a proactive corporate engagement strategy, characterized by joint learning, joint management of projects with the participation of both communities and the company, and providing the community with a leadership role (albeit ‘supported’ by the company) in framing problems

and managing solutions. It exceeds symbolic engagement, going beyond to action, and requiring competencies on the part of the company to engage community participants through listening and understanding (Bindu & Salk, 2006; Bowen et al., 2010; Schouten & Remm, 2006). Trust was found to be based on personal relationships (Bowen et al., 2010). As transformational engagement requires intense organizational efforts on the part of the company as well as the community it is typically limited to a small number of partners (Bowen et al., 2010).

### **Global Governance**

The global governance literature has highlighted several problems that directly or indirectly inform the emergence of normative frameworks and guidance documents encompassing the normative concept and the idealized practice of MSE (see examples of some frameworks in Table 1.1).

The literature has called attention to global, as well as national, governance gaps that allow corporate misconduct and violations to take place (Risse, 2011; Ruggie, 2004). It identified the limited recognition of business enterprises in transnational and international law as an important cause and called for increased participation of the private sector with regard to duties as well as interaction with public and civil society organizations involved in international and transnational governance (Picciotto, 2003; Ruggie, 2004). It was deemed necessary to develop ways to tackle issues of corporate responsibility for poor labour conditions and human rights, transparency, accountability, environmental sustainability, and sustainable development in general (Dashwood, 2012; Voegtlin & Pless, 2014). Studies highlighting imbalances between, on the one hand, the rights that enterprises enjoyed because of developments in international trade and economic law since the Second World War, and, on the other, the absence of duties for the adverse societal impacts that they cause (Ruggie, 2004) fed into the establishment of the UN Global Compact in 2000 (Anna, 1999; Buhmann, 2018a). The following decade saw a surge in private and hybrid (public–private) normative frameworks on responsible business conduct, intended to respond to the governance gaps identified by the global governance literature and assuming enhanced interaction between affected people and those who caused harmful impacts, or where otherwise involved. The emphasis on the importance of engagement with affected stakeholders being meaningful was explicated by the UNGPs, leading to the uptake of references to MSE in several other governance frameworks which, as noted in second section of this chapter (“A necessary focus on affected stakeholders”), provide additional details on what MSE entails in terms of ideal and practice. As a result, the ongoing elaboration of MSE is a result of the literature as well as normative frameworks and guidance texts.

While the UNGPs can be understood and appreciated as an important global governance framework that – along with the UN’s ‘Protect, Respect and Remedy’ Framework – contributed to breaking a previous stalemate (Buhmann, 2013) and has spurred the evolution and spread of more detailed guidance by other organizations, the UNGPs have been subject to criticism for inadequate legitimacy and accountability issues similar to those levelled at many other global frameworks (Deva, 2021; Hamm, 2022; Jägers, 2011). For instance, details on what is required for meaningful engagements are limited. On the one hand, this is partly a result of the strict 30-page limits on both the UNGPs and the UN Framework, which led many important issues to be only superficially addressed, although elaborated in detail in rich underlying studies (Buhmann, 2017). On the other hand, those weaknesses underscore the

Table 1.1 Examples of key global frameworks for MSE noted in this chapter

<i>Global Framework</i>	<i>Issues and Focus Area(s)</i>	<i>Affected Stakeholders</i>	<i>Non-affected Stakeholders</i>	<i>Example of MSE Mechanisms</i>
UNGPs	Human rights	Workers, communities, individuals Civil society if affected, or representing affected stakeholders	Governments, corporations Civil society, individuals, and communities not directly affected	Meaningful engagement with affected stakeholders as part of due diligence to identify and address risks and impacts, including to define and provide remedy
OECD Guidelines (2011 and 2023 updates)	Human rights, labour, environment, anti-corruption, consumer concerns; technology	Workers, communities, individuals Civil society if affected, or representing affected stakeholders	Governments, corporations Civil society, individuals and communities not directly affected	MSE in risk-based due diligence as in the UNGPs Working through National Contact Points (NCPs) to engage diverse stakeholders to promote the Guidelines and therefore MSE. Working with affected stakeholders (and their civil society representatives, if applicable) to and address grievances related to corporate misconduct
UN Global Compact	Human rights, labour, anti-corruption, environment	Mainly indirectly, through human rights principles' references to the UNGPs Workers, communities, individuals Civil society if affected, or representing affected stakeholders	Corporations, business associations and networks; governments International NGOs (INGOs) Civil society, individuals and communities not directly affected but taking a more general societal interest	Working through its annual local networks forum to deal with issues affecting a variety of stakeholders

(Continued)



Table 1.1 (Continued)

<i>Global Framework</i>	<i>Issues and Focus Area(s)</i>	<i>Affected Stakeholders</i>	<i>Non-affected Stakeholders</i>	<i>Example of MSE Mechanisms</i>
UNDRIP	Indigenous Peoples' rights, Procedural justice	Indigenous individuals and communities. Civil society if affected, or representing affected stakeholders	Governments, corporations Civil society, individuals and communities not directly affected but taking a more general societal interest	Establishing the need to seek the free, prior and informed consent (FPIC) of Indigenous peoples impacted by a project
ILO C169	Indigenous and tribal peoples' rights	Indigenous and/or tribal individuals and communities Civil society if affected, or representing affected stakeholders	Governments, corporations Civil society, individuals and communities not directly affected but taking a more general societal interest	Introducing elements of free and informed consent when relocation has to take place; Consultation and participation in decision-making; land rights of Indigenous and tribal peoples (Part II, Article 13–19)
GRI Standards	Sustainability (Biophysical, social, economic and governance issues)	All affected stakeholders	Private and public organizations applying GRI	Sound stakeholder engagement is required in materiality analysis, including materiality of issues and stakeholders. This informs both the reporting process and the auditing/assurance of reported information.

need for a fuller elaboration of MSE, with an emphasis on bottom-up perspectives to enable those affected to have a say.

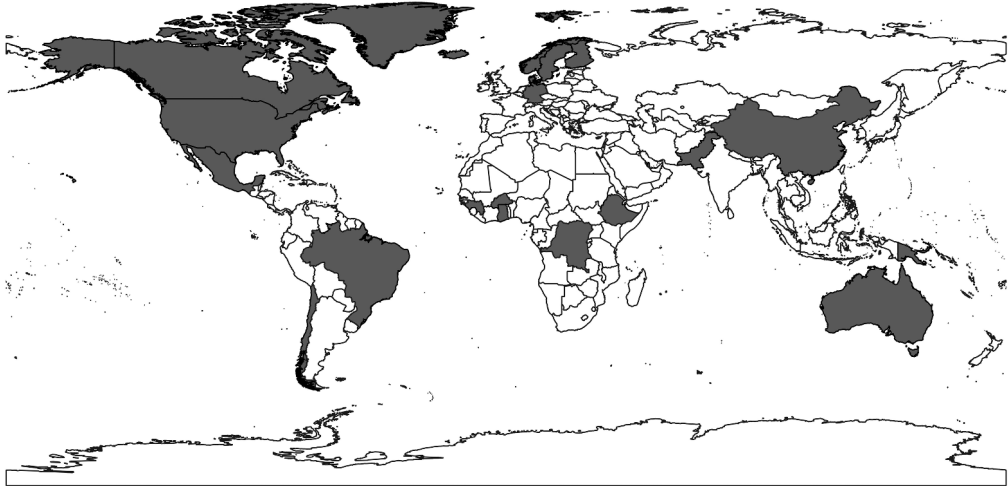
The UN Global Compact, which covers ten principles on human rights, labour standards, environment and anti-corruption matters, has been described as a leading corporate responsibility framework at the global level (Andrews, 2019b; Voegtlin & Pless, 2014; Williams, 2004). The Compact's principles do not refer explicitly to MSE. However, UN Global Compact's website, which serves as a key source of elaboration and guidance for the principles (Buhmann, 2017), does so indirectly by referring to the UNGPs as a key source for the Compact's human rights principles. The Global Compact engages with a variety of non-affected stakeholders through its office and other entities, jointly representing the UNGC's collaborative governance approach (Andrews, 2021b). This means that the processes undertaken while implementing the Compact's principles are made through engagement with diverse stakeholders, but mainly not those who are at risk or actually affected by harmful impacts caused by business activities. Through local networks, for instance, civil society groups are expected to have the capacity to contribute to the decision-making that involves the behavior and actions of corporate actors. In collaboration with the Global Compact as well as in other contexts, civil society groups often represent potentially or actually affected stakeholders; but even in representing such stakeholders, civil society groups also have their own vested interests and do not necessarily represent all interests or groups of affected people (Buhmann, 2018a). It remains unclear how such semi-formal processes involving civil society organizations can extend engagement with actually or potentially affected people on the ground in a manner that delivers meaningfulness to them, on their terms and equipping them to understand impacts and voicing their concerns in such a way that they are considered by decision-makers.

The global relevance and uptake of MSE exceeds the initial focus on governance gaps. As the rest of this volume demonstrates, MSE is of importance to and across individuals, communities, companies, and a range of organizations operating at different scales and with different forms of power to influence the practice of stakeholder engagement. We cannot, therefore, assume that what MSE means and its relevance at the global level has the same meaning and implications for people in 'local' settings whose daily lives directly intersect with (and sometimes contradict) the practice of meaningful engagement on the ground. At least, what can be seen from the chapters and practice notes of this handbook is that MSE is neither straightforward nor only exclusive to some locations of the world.

### **Overview of the Handbook and Its Academic Chapters and Practice Notes**

This handbook on MSE comprises 18 academic chapters and 11 practice notes, besides this introduction and the final concluding chapter. The practice notes are brief chapters authored by professionals who have experience with MSE in a diverse range of practical and sectoral contexts, as well as affected people whose own experience of stakeholder engagement bring to the fore insights on aspects of meaningfulness. The practice notes complement the academic chapters by contextualizing and illustrating specific theoretical and sectoral issues.

These chapters and practice notes were written by a diverse range of scholars and practitioners from around the world who discuss and illustrate their arguments drawing on practices and case studies from at least 21 countries located in Africa, Asia, Europe, Oceania, North and South America (see Figure 1.3). The geographical dispersion of contributors,



*Figure 1.3* Countries where practices and case studies discussed in this handbook are located

*Note:* Shaded countries include Australia, Brazil, Burkina Faso, Canada, Chile, China, the Democratic Republic of Congo, Denmark, Finland, Germany, Ghana, Greenland, Guinea, Iceland, Italy, Mexico, Norway, Pakistan, Papua New Guinea, Sweden, the United States.

practices, and case studies assigns an ‘international’ character to this handbook and corroborates the spread of MSE globally.

The handbook is organized into four main parts. The **first part**, which comes after this introductory chapter (Chapter 1), brings forth some conceptual and theoretical perspectives on MSE.

In Chapter 2, Freeman and Menghwar (2024) provide a description of the connection between stakeholder theory and communities. Discussing MSE as an organization’s purposeful interaction with stakeholders to address their concerns and commit to value co-creation, the authors observe that past stakeholder research is riddled with overlapping labels and conceptual ambiguities. Thus, it is unclear how an organization meaningfully engages with marginalized stakeholders such as affected communities, essentially comprised of individuals who may be affected stakeholders in their own right. On this basis, the authors present an exposé on various mechanisms organizations use to engage with respective communities. The authors explore four dimensions of community – as entailing people, feelings, relationships, and problems – and use this conceptualization as a premise to describe the extent to which meaningful engagement can be realized.

In Chapter 3, Chen and Stoddart (2024) further expand on discussions in Chapter 2 by reflecting on the meaning of “community” in inclusive stakeholder engagement. Inclusiveness is an important aspect of stakeholder engagement to be able to deliver a meaningful process for those affected. Chen and Stoddart explore various types of place-based communities, based on two rather different cases: the Muskrat Falls dam in Labrador in Canada, and oil extraction in Norway. They argue that the perception of community can be highly context-dependent, and that this has implications for who is involved and included in a stakeholder engagement process as well as who represents those affected.

Chapter 4 is a practice note in which Sven-Roald Nystø, a former president of the Sámi Parliament in Norway, reflects on the correlation between place, community, and income

generation and welfare-state services for the Sámi people in his home community, Ájluokta-Drag. Located in northwestern Norway and bordering on the Atlantic Ocean, this is a mixed Norwegian-Sámi community where fishing has long played a major role, along with farming and mining. At a time where traditional income generation and employment in the area are set under pressure by the expansion of resource extraction and other developments associated with the green transition, Nystø (2024) recounts experiences and implications for meaningful engagement in light of the Sámi peoples' special relationship to places. He discusses this at a backdrop of the Sámi community's sense of having limited influence over resource extraction, while companies encounter uncertainty over what rules to follow, and governmental bodies struggle with inadequate legislation.

In Chapter 5 on MSE and the right to consultation and rights of nature, Wu (2024) discusses nature as an affected stakeholder. Wu takes point of departure in the concept of Rights of Nature (RoN), which embodies the idea that sees nature as not only a stakeholder but a rights-holder in an anthropocentric legal system. This concept of treating nature as a rights-holder and, therefore, a (potentially) affected stakeholder, is migrating into mainstream legal practices around the world. One of the main concerns is that because nature cannot speak for itself in a human way, how then are humans to decide and represent nature's interests and rights in an anthropocentric legal and political system? Taking a Rights of Nature and Epistemic Justice perspective the chapter argues that for stakeholder engagement to be meaningful, it must be just. Based on a series of court cases, it discusses what this means and how the rights of nature can be expressed and represented meaningfully.

Part II of the book deals with MSE in impact assessment and other semi-regulated contexts.

In Chapter 6, Fonseca and Fitzpatrick (2024) reviews the issues that are recurrently highlighted as both barriers and facilitators of meaningful participation in the Brazilian and Federal impact assessments. Based on literature and regulatory reviews, the contributors argue that, despite recent improvements, there remain significant challenges to empowering affected people in impact assessment decision-making.

In Chapter 7, focused on 'best practice' for stakeholder engagement, Larsen and Buhmann (2024) discuss MSE between formal requirements and affected stakeholders' expectations and experiences in Iceland and Greenland, two Nordic Arctic countries. Within the wider context of a rise in Arctic countries in the construction of wind, hydro, and solar power infrastructures and of mining for minerals for the green transition, Larsen and Buhmann identify four tensions related to social and environmental impact assessments, with a particular focus on public participation in decision-making processes on the use of land, raw materials, and other natural resources.

In Chapter 8, another practice note, Storey (2024) draws on his legal advisor expertise to discuss the challenges of achieving meaningfulness in consultations with First Nations in Northern Australia. More specifically, Storey argues that, while the mineral resources sector has been increasingly adopting frameworks, such as the UNDRIP and FPIC, this is not necessarily leading to meaningful outcomes to First Nations due to the elusive nature of FPIC, and the existence of numerous legal and implementation barriers.

In Chapter 9, Fitzpatrick and Fast (2024) take a broader look at the various regulatory tribunals in Canada to consider how different voices are recognized across a range of administrative tribunals. Their study, based on legislative reviews across fifty-five tribunals that provide advice and guidance to government, found that public access to meaningful participation opportunities varies significantly depending on the jurisdiction and the type of tribunal. The

chapter also identified good practices and substantial room for improvement in order to fully democratize the regulatory decision-making process in Canada.

In Chapter 10, Sheri Meyerhoffer delivers a practice note that sheds light on her role as the Canadian Ombudsperson for Responsible Enterprise (CORE), an arm's-length office of Global Affairs Canada with a business and human rights mandate to hold Canadian garment, mining, and oil/gas companies accountable for abuses, violations, and corporate malpractices they commit in their operations abroad as well as their supply chains. Through its 'listening tours' that began in 2019, the CORE office has engaged with a variety of public, private, and community stakeholders. Meyerhoffer admits that the concept of MSE can mean different things to different stakeholders; to ensure that the process is seen as fair and legitimate, however, the CORE needs to balance these divergent understandings and expectations. A key lesson from the CORE experience is that stakeholder engagement does not end even after an official process has concluded. Davidson and Grant (2024) provide a brief reflection in Chapter 11 that situates the ongoing work of the CORE office within the context of its predecessor, the Office of the Extractive Sector Corporate Social Responsibility Counsellor. The primary difference between the two offices lies in the approach – with the CORE described as being more reactionary while the erstwhile CSR Counsellor's office was more proactive in promoting responsible business conduct. These two approaches have different outcomes for processes of meaningful stakeholder engagement.

In Chapter 12 on multi-level stakeholder engagement in the Norwegian Sami areas, Mestad (2024) discusses different ways in which the interests of the Indigenous Sami people are covered by consultation requirements and channeled into decision-making affecting Sami rights-holders. Mestad includes examples of some of the most conflict-related issues regarding energy and minerals, in particular between traditional reindeer herding and wind power or mining interests as well as conflicts in between different Sami groups. In this context, Mestad also discusses the decision in 2021 by the Norwegian Supreme Court in the Fosen case that a wind farm that had already been built violated Sami rights based on Article 27 of the UN Convention on Civil and Political Rights.

Addressing a related topic in a practice note, in Chapter 13 Gråik (in a conversation with Karin Buhmann) (2024) relates her account as a spokesperson and member of a Sami reindeer herder community in regard to the construction of a large wind farm in Sweden. Gråik reflects on the community's experience of meaningful involvement in the impact assessment and decision-making process for the wind farm and its impacts on the grazing for the community's reindeer, and subsequently in the community's complaints process with the grievance handling mechanism offered by the OECD NCP system.

In Chapter 14, on Remedy and MSE, Rogge (2024) looks at stakeholder engagement in the design and implementation of operational-level grievance mechanisms (OGMs) under the UNGPs. OGMs refer to non-judicial grievance mechanisms set up by businesses and other organizations for addressing business-related human rights complaints. Rogge proposes a novel typology of three distinct modes of stakeholder engagement that are used in developing OGMs: unilateral, bilateral, and multilateral. The chapter uses this typology to show how differentiated modes of stakeholder engagement are linked to the varieties of institutional design of OGMs, as well as to their ongoing effectiveness, or lack thereof.

In another perspective on non-judicial grievance mechanisms within the larger context of MSE, Chapter 15 discusses a specific case handled by the Dutch National Contact Point (NCP) for the OECD Guidelines based on a complaint from previous employees of Heineken's African subsidiary Bralima. A practice note by van der Putten (2024), the case focuses on the

meaningfulness of remedy. The note explains and discusses how mediation as a form of conflict resolution can assist affected stakeholders in obtaining meaningful remedy in a context where the resolution of the conflict is made complicated by multiple factors, including the transnational character of the case and the impacts.

Part III of the book explores MSE in sectoral contexts.

In Chapter 16, Eke et al. (2024) point out the little attention reserved to study how the supply chains associated with the green transition is impacting community members who reside near the mining sites of ‘critical minerals’, otherwise known as ‘green minerals’. In this chapter, the authors also question whether and to what extent extracting and refining critical minerals, including its supply chains, produces a net gain in terms of addressing climate change. The chapter considers as a case study the situation of the Democratic Republic of Congo, one of the countries with the largest reserves of critical minerals in the world (such as cobalt and copper), where communities are facing forced eviction by the mining industry.

Chapter 17, a practice note by Abdala and Veiga (2024) provides a thorough account of a nuanced case of community engagement in the Brazilian Amazon: the Juruti Mine. Based on the practitioners’ experience in the mining company, the practice note explains the need that the mining company felt many years ago to challenge the status quo and implement a governance system that has multiple layers of engagement and that empowers the local government and Indigenous groups to participate in the decision-making processes of relevant issues, including mining royalties. The practitioners highlight not only best practice, but key challenges and barriers to advancing meaningful outcomes to communities.

Meaningful engagement is the main topic of Chapter 18 by Amatulli and Nelson (2024), which sheds light on the litigation started in 2015 by Chief Marvin Yahey on behalf of Blueberry River First Nations (BRFN), who successfully sued British Columbia (BC) on the cumulative effects of industrial development on BRFN’s treaty territory. In the verdict, the Supreme Court of British Columbia sentenced that by authorizing industrial development, the province of BC breached its obligation to BRFN under the so-called Treaty 8. Therefore, the province could not continue to authorize activities that breach Treaty 8 and its unwritten promises without meaningfully engaging with the Nation. As a result, the province had to negotiate with Treaty 8 First Nations of Northern British Columbia to define new consultation strategies in the context of an effective engagement regime. Within the context of meaningful stakeholder engagement, the chapter is a case study of Doig River First Nation (DRFN), a Treaty 8 First Nation with a shared history of land use with BRFN. In this contribution, it is explained how engagement for the purposes of resource development will need to shift post-Yahey from transactional consultation leading to project approval by the province, to meaningful community engagement with the goal of achieving First Nation consent and reconciliation.

The importance of engaging meaningfully with communities is clearly addressed in Chapter 19, the practice note by Jason Prno (2024). This note describes how resource developers can generate best practices and culturally appropriated procedures to achieve successful community engagement outcomes in Northern Canada. It also highlights how establishing trust and relationships with community members is at the forefront of conducting meaningful processes of engagement and consultation.

Meaningful stakeholder engagement can only be achieved if biases (gender, cultural, as well as unconscious biases) are properly overcome. In Chapter 20, Scabin et al. (2024) reveal an interesting case of gender bias in the consultations that took place in the aftermath of one of Brazil’s most catastrophic tailings dam disasters: the Fundão Dam Break in 2015. Based

on a longitudinal content analysis of numerous news articles that followed the disaster, the contributors show that the mining companies missed the opportunity to properly include women's views in the remediation programs, and that this led to various types of unintended adverse effects. The chapter also points out specific ways to overcome gender bias and make stakeholder engagement more inclusive. In Chapter 21 on wind power, green transition, and stakeholder engagement in the Finnish context, Jenkins and Kurkinen (2024) address the need to decarbonize our energy systems to mitigate the impact of climate change. They describe wind power as a key component in the green transition, as it can provide a reliable, clean, cost-effective, and domestic source of renewable energy. Nevertheless, wind farms can impact surrounding biodiversity, communities, and land-use practices. In such a context, offshore wind power may alleviate some land-use impacts but has other challenges to overcome before it can be rapidly upscaled. The chapter provides insights from two participatory stakeholder projects that explored: 1) the sustainable development of offshore wind power, and 2) citizen perspectives of mining activities, both in Finland. The chapter discusses the process the authors undertook to engage with stakeholders and experts and provide practical examples and guidance.

In Chapter 22, Mohammed (2024) examines the stakeholder engagement strategies of traditional leaders (chiefs) who are demanding special benefits from Ghana's oil and gas sector due to their geographical location as 'affected communities'. By analysing how the chiefs have collectively and individually engaged with the government and oil and gas companies to demand 10% of proceeds from the oil find, the chapter points out how their action has largely conformed to an important form of participation and represents a somewhat bottom-up approach to stakeholder engagement since the chiefs traditionally are representatives of the local population. However, how meaningful these processes have been in terms of clear outcomes and benefits to the local population remain to be seen, as many chiefs feel that their actions have not fulfilled the intended purpose. This is also because traditional leaders tend to have varied interests (sometimes contradictory to the general community needs) and their engagements with respective stakeholders in the industry remain unregulated.

Another African example of MSE in practice is presented in Chapter 23, the practice note penned by Emelia Ayipio Asamoah and Rusmond Didewuyem Anyinah (2024). The authors present a description of how MSE was operationalized in the delivery of the West Africa Governance and Economic Sustainability in Extractive Areas (WAGES) project in Burkina Faso, Ghana, and Guinea – a project that was facilitated by two Canadian NGOs, World University Service of Canada and the Center for International Studies and Cooperation, and funded by Global Affairs Canada. Following a multi-stakeholder framework, the WAGES project engaged a variety of industry, civil society, and community stakeholder groups that resulted in several outcomes, including delivery of entrepreneurial training to over 2,000 stakeholders and the development of guidelines for Mining Community Development Schemes to assist the disbursement of funds for beneficiary mining districts. Despite the challenge of dealing with divergent stakeholder perspectives, Asamoah and Anyinah insist that the meaningful engagement processes they pursued enhanced the success of the WAGES project.

In Chapter 24 on just energy transitions and Indigenous experiences in Chile, Figueroa, Flores, and Silva (2024) take point of departure in Indigenous community participation in Chile's fast-growing wind energy and lithium mining projects. The chapter explores the extent to which existing legal instruments allow for meaningful, fair, and active participation of Indigenous communities in green energy transition projects. The chapter proposes to

integrate the MSE ideals with Energy Justice to promote inclusion and recognition of affected, vulnerable, and often-overlooked stakeholders, particularly Indigenous communities, in decisions related to the green transition. The chapter emphasizes that this engagement will only be meaningful if it is accompanied by a commitment to justice. The authors argue that this means recognizing these communities as key stakeholders with rights that must be respected and upheld, ensuring that their land use, values, and knowledge are not infringed upon, and that their social fabric and environment are not further fragmented.

In Chapter 25, Hayes and Romero (2024) examine stakeholder engagement processes in two rural municipalities in Southern Mexico where mining companies faced community opposition. The authors argue that the lack of public policies of stakeholder engagement, as dictated by the federal system of Mexico, exacerbates social-environmental conflicts, with municipal governments not doing enough to support the opposition of affected communities. In other words, the absence of meaningful stakeholder engagement processes multiplies the risks and negative impacts experienced by communities that are already at the receiving end of harsh mining outcomes.

In Chapter 26, another practice note, Trier (in conversation with Karin Buhmann) (2024) reflects on opportunities for creating meaningful engagement with mega-construction project workers and spectators in complex environments, such as where independent trade unions do not exist and construction work is mainly undertaken by migrant workers. Taking point of departure in practices deployed by the Fédération Internationale de Football Association (FIFA) in collaboration with an international civil society organization and the United Nations in the context of the 2022 World Cup, Trier provides examples of methods to educate workers and event spectators on their rights and ensuring good and safe labour practices. The note provides examples of actions taken by external actors in response to very poor and dangerous conditions for migrant workers. While the steps discussed were by no means sufficient to deal with underlying structural problems concerning the rights, safety, and security of migrant workers, the note offers reflections on options for such methods to be deployed in related contexts in the region where similar types of structure issues exist and new mega-projects may be forthcoming.

The foreign-invested textile sector in Ethiopia is the topic of Chapter 27. In a practice note, Liang (2024) takes point of departure in a survey undertaken as part of a baseline study undertaken by the United Nations Industrial Development Organization (UNIDO) jointly with the Ethiopian Textile Industry Development Institute (ETIDI) and the China National Textile and Apparel Council (CNTAC) to explore capacity building and training needs for enhanced awareness and deliver on ESG factors within the foreign-invested and -operated Ethiopian textile industry. With an emphasis on the 'S' aspect and the situation of workers and local communities, as well as the involvement of workers, unions, and civil society organizations in the identification of capacity-building needs, Liang reflects on insights from the survey in regard to meaningful engagement of such stakeholders.

Part IV of the book explores MSE in regard to research and methodological perspectives.

Focusing on the question of methods that can facilitate research on meaningful stakeholder engagement and how we can implement these methods in a meaningful manner to engage with diverse stakeholders, Nathan Andrews and Sulemana Saaka (Chapter 28) reflect on the implications of the choice of research methods for MSE work. The chapter provides a synthesis of various methods that may be regarded as community-engaged or stakeholder-engaged, their pros and cons and discusses ways to be sensitive to and inclusive of the knowledge and priorities of stakeholders that are often marginalized in the process of research.



Chapter 29 takes point of departure in experiences from a research project on leadership and (in)equality in Greenlandic organizations. In this practice note, Rasmussen (2024) considers handling meaningful stakeholder interactions as a professional craft in research. The note discusses how MSE contributes to relevant knowledge about a particular topic and has a social impact for stakeholders engaged in meaningful dialogues. It delves into the methodological considerations and reflexive processes involved in developing knowledge through interactions with stakeholders.

Chapter 30, by Fonseca et al. (2024), concludes Part IV with a study on the ethical issues that may arise in making stakeholder engagement in the context of operational-level grievance mechanisms meaningful for the affected people. Drawing on the field of research ethics, the authors reviewed the literature and surveyed the perception of the people affected by a tailings dam disaster – the same disaster discussed in Scabin et al.'s (2024) chapter. The authors argue that despite overall good intentions, for example in efforts to provide remediation through a form of operational-level grievance mechanisms, stakeholder engagement can be perceived to be unethical and generate harm to affected people. The argument points to an underexplored ethical dimension to stakeholder engagement that overlaps with the notion of meaningfulness.

Finally, in the concluding chapter (Buhmann et al., 2024), the editors draw up a series of perspectives for the future of meaningful stakeholder engagement integrating policies, norms, and practices. In the conclusion, Buhmann, Fonseca, Andrews, and Amatulli take stock and revisit the state of the art, based on the book and the literature; they then reflect on expectations of MSE based on a survey undertaken with the contributors of this handbook. Next, they discuss the need for integration of the three aspects inherent in MSE (meaningfulness, stakeholders, and engagement) and finally propose some pointers for what to expect of MSE in the context of theory and practice.

## Notes

- 1 In addition to assessing actual and potential human rights impacts, due diligence involves integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed, including the provision of remedy (Guiding Principle 17–22).
- 2 The French law, introduced in 2017, requires large companies domiciled in that country to have in place a 'vigilance' plan identify and prevent the risks of severe violations of human rights and fundamental freedoms, health and safety and the environment, including climate change, which result from their own activities or the ones of companies under their control as well as the activities of subcontractors or suppliers with whom they have an established commercial relationship (Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 27 March 2017).
- 3 Adopted in 2021, the German Value Chain Due Diligence Act requires companies to exercise due diligence with regard to human rights and certain environmental standards in their own activities and in their value chain. The process must include all products and services of a company and all production steps in Germany and abroad which are necessary for the production or performance of service, from the raw material extraction to the delivery of the product to the end-user. The obligation takes effect on 1 January 2023 for very large companies (more than 3,000 employees) that have their central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany and 1 January 2024 for large companies (more than 1,000 employees in Germany) (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (German Supply Chain Due Diligence Law), Bundesgesetzblatt Teil I 2021 Nr. 46, 2959–2969, 16 July 2021).
- 4 In 2021 Norway, adopted legislation creating a corporate duty for large and medium-sized companies domiciled in Norway as well as foreign companies selling products and services in Norway, to

- conduct due diligence in relation to human rights and decent work throughout all their supply chain, and to provide or cooperate to ensure remedy (Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (Norwegian Transparency Act) 10 June 2021). Norway is not a member of the EU but associated as an EEA member.
- 5 In 2019, the Netherlands introduced requirements on companies selling goods or providing services to the Dutch Market to exercise human rights due diligence in relation to child labour (Wet zorgplicht kinderarbeid 24 October 2019).
  - 6 EU Regulations on Critical Raw Materials (2023), Batteries (2023), Deforestation-free Supply Chains (2023), and Conflict Minerals (2017).
  - 7 This follows from the EU's Corporate Sustainability Reporting Directive (2022); Sustainable Finance Disclosure Regulation (2019) and Non-financial Reporting Directive (2014).
  - 8 This follows from article 18 in the EU Taxonomy Regulation (2020).
  - 9 The bill, known in 2023 in Brazil as "Projeto de Lei 572/2022" refers to term 'effective participation', given the absence of term 'meaningful' in the Portuguese vocabulary.
  - 10 See e.g. <https://www.ictinc.ca/blog/9-terms-to-avoid-in-communications-with-indigenous-peoples> (last accessed on 17 November 2022).
  - 11 For example, Brazil, Canada and Norway.
  - 12 At the time of writing (March 2024), only 24 states have ratified ILO 169 (ILO NORMLEX *Ratifications of ILO C169*, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312314](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314), last accessed on March 11, 2024).
  - 13 The International Bill of Rights comprises the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966).
  - 14 The ILO's fundamental conventions cover a safe and healthy working environment; the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation.

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## **PART I**

# Conceptual and Theoretical Perspectives



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## 2

# STAKEHOLDER THEORY AND COMMUNITIES

## Navigating Processes of Meaningful Engagement with Marginalized Communities

*R. Edward Freeman and Prem S. Menghwar*

### Introduction

Recently, a vast amount of literature on stakeholder engagement has been written by stakeholder theorists, strategy, and business ethics scholars (Freeman et al., 2017; Harrison & Wicks, 2013; Wood et al., 2021). Initially, researchers considered stakeholder engagement as a responsible practice or corporate social responsibility in action; however, later, it was seen as a separate practice, albeit one still related to corporate social responsibility (Greenwood, 2007). There are two schools of thought among advocates of stakeholder engagement; the narrow view argues that it is a morally neutral practice (Greenwood, 2007); others take a broad view and emphasize moral, strategic, and pragmatic elements (Kujala et al., 2022).

Past research on stakeholder engagement presents confusion on two fronts. First, it has suffered from definitional issues because scholars have used overlapping labels such as stakeholder management, stakeholder inclusion, stakeholder democracy, and stakeholder collaboration. Second, most of the research on stakeholder engagement is focused on organizations that are large and explain how organizations limit bad practices, in other words, moral connotation to stakeholder engagement (Kujala et al., 2022; Menghwar and Freeman, 2023).

Extant research has overlooked the processes of organizational engagement with affected communities (Buhmann et al., 2024). As a result, much about stakeholder engagement remains both unexplained and unexplored. Thus, it is not clear how organizations get involved with multiple communities and create value for themselves and their communities. It is important to research this question because community engagement has been considered a popular means of making profits and having a positive impact on the community.

Therefore, our aim in this study is to address this question and explain different ways through which organizations can effectively engage with stakeholders and create value for the communities. In order to achieve this goal, it is important to de-mystify that notion of the community by elaborating on dimensions instead of defining with technical language, which is often the case on this subject.<sup>1</sup> While doing this, we contribute to the literature in two ways – first, building on the emergent literature in sociology on the community, we describe four building blocks of the community, namely – people, feelings, relationships, and problems. Then, we take two communities – community of practice and community of place – and

explain different ways organizations can engage with communities to create value. These communities are largely marginalized. In our view, a marginalized community (or stakeholder) is defined as undervalued or ignored. In general, any community or stakeholder who is undervalued or ignored is marginalized.

We show that there is no one way to engage and address the concerns of communities. However, there are distinctive ways – some organizations, through collective entrepreneurship,<sup>2</sup> engage with relevant communities to create value for central and peripheral stakeholders, while others are established by a single entrepreneur but use the approach of collaborative engagement with affected communities and create a brand around them to create value for multiple communities.

The rest of the study is organized as follows – first, we give the historical background of Stakeholder Theory and explain the concept of meaningful stakeholder engagement; then we focus on the term community and explain its characteristics. Next, we elaborate on different mechanisms of creating value for the community of place and community of practice by extending examples of organizations closely engaged with these communities. Finally, we discuss theoretical implications and direct future areas of research.

### **The Historical Background and Description of Stakeholder Theory**

While several thinkers have claimed authorship of the stakeholder approach (Schwab, 2021), research verifies that the original founders were Eric Rhenman in Sweden, and a team of consultants at Stanford Research Institute in the early 1960s (Freeman, 1984; Slinger, 1999; Strand et al., 2015). Most of the original work was aimed at understanding business strategy. Two definitions emerged: (1) The so-called “narrow definition” or “stakeholders are groups or individuals upon whom the firm depends for survival”; and (2) The so-called “wide definition” or “stakeholders are groups or individuals who can affect or be affected by the achievement of a company’s purpose or objectives”. While there are many other definitions, these two serve to define what has become two branches of stakeholder theory. Some people saw the first definition as grounding the firm in some sense of ethics, as obligations to customers, suppliers, employees, communities, and financiers, on whom the firm depends for survival. Others saw the stakeholder theory as compatible with shareholder primacy. They believed that paying attention to those groups who could affect the firm or be affected by the firm was just good common sense, and good business thinking. While there could be a conflict with shareholder primacy, there need not be one. The basic insight in both cases was that managers and executives needed to pay attention to stakeholder relationships. And this became known as “stakeholder management.”

As the theory and practice evolved, the idea of stakeholder management took on the connotation of putting the firm in the center and managing/trying to control the interests of stakeholders. Since this was not the intent of some of the early theorists, critical thinking about stakeholder engagement evolved. How should firms build cooperative relationships with key stakeholders? Pragmatic theorists suggested that the question of definition and many of the other questions of stakeholder theory could be better answered by first figuring out what problem the firm was trying to solve (Freeman et al., 2010).

As the stakeholder idea gained more good currency, many people began to talk about “stakeholder capitalism” as a new narrative for business. Many began to see the very nature of business as consisting of value-creating stakeholder relationships. While there are multiple interpretations of stakeholder capitalism, our view is that it has to do with the underlying

business model that connects a firm's purpose with the set of stakeholder relationships for whom it creates value (Freeman et al., 2020; Menghwar & Freeman, 2023). The literature on stakeholder theory has moved from stakeholder engagement to stakeholder capitalism. The construct of stakeholder engagement was put forward to distinguish between enhancing shareholder value and engaging with stakeholders for long-term value creation (Andriof et al., 2002). However, scholars paid little or no attention to engagement with marginalized communities (Kujala et al., 2022).

### **Understanding Meaningful Stakeholder Engagement**

In the last two decades, there has been a vast amount of research on the concept of stakeholder engagement, which has enhanced the understanding between firms and the activities they conduct to engage with stakeholders. However, the construct of stakeholder engagement lacks a unified definition and is riddled with overlapping conceptual ambiguities. For example, some consider it a way to enact corporate responsibility in order to reduce the weight of shareholders (Hine & Preuss, 2009), while others consider stakeholder engagement a practice that is separate from social responsibility (Greenwood, 2007).

The recent study by Kujala et al. (2022) based on 15 years of research on stakeholder engagement shows that this research can be categorized into three components: moral, strategic, and pragmatic (Kujala et al., 2022). First, stakeholder engagement is considered moral practice if a firm voluntarily engages with stakeholders and intends to do good (Greenwood, 2007). Second, the strategic perspective on stakeholder engagement takes an instrumental view and states that a firm's engagement approach will increase financial profits and give a competitive advantage (Gupta et al., 2020). Third, the pragmatic approach is based on the philosophical foundations of pragmatism and focuses on actions and consequences in a particular context (Dmytriiev et al., 2017; Sandberg & Tsoukas, 2011).

Building on these three components (moral, strategic, and pragmatic), stakeholder engagement is defined as "aims, activities, and impacts of stakeholder relations in a moral, strategic, and/or pragmatic manner" (Kujala et al., 2022, p. 1160). Scholars have overemphasized the importance of stakeholder engagement activities' positive moral component (Mitchell et al., 2022). Thus, there is an increasing need to move from the transactional approach to the relational one (Menghwar & Freeman, 2023). Additionally, much of the research has focused on primary stakeholders and failed to explain how organizations engage with fringe and marginalized stakeholders such as the community (Kujala et al., 2022). In this study, we take a relational view instead of a transactional one to explain processes through which organizations engage with marginalized stakeholders. We focus on meaningful stakeholder engagement, which is a normative concept, and emphasize ideal engagement practices with affected or marginalized stakeholders (Buhmann et al., 2024). We believe meaningful stakeholder engagement is an organization's purposeful interaction with stakeholders to address their concerns and commit to value co-creation. This clarifies that meaningful stakeholder engagement is purposeful and involves affected stakeholders instead of only influential stakeholders to create value for the company and its stakeholders. These organizations consider stakeholder engagement an approach connecting business, society, and stakeholders (Freeman et al., 2017). Research has shown that businesses have cared more about powerful stakeholders and ignored marginalized stakeholders such as the community (Kujala et al., 2022). Therefore, first, we provide a description of the important but overlooked stakeholder – community – and then explain the processes through which companies can engage for value creation.



## **Understanding Community and Its Fundamental Dimensions**

### *Concept of Community and Definitional Issues*

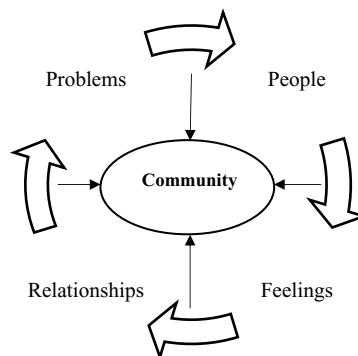
Community is an old concept, and the debate about its understanding in the literature is also ancient. Stroud et al. (2015) reviewed definitions of community and noted a plethora of research on the term community and scholars have offered multiple, overlapping, and contradictory definitions. The term community is prone to varying subjective interpretations because scholars from various fields, such as sociologists, ecologists, psychologists, and medical professionals, have conducted research on this term (MacQueen et al., 2001; Hu et al., 2008; Stroud et al., 2015). A large part of the research has focused on defining the term community, which has enhanced our understanding of the term; however, it has also brought ambiguity due to varied definitions and explanations (Wilkinson, 2023), as happens with other terms and constructs when scholars focus too much on definitions (Menghwar & Daood, 2021).

There is no need to have a single definition because the meaning of community varies. The community is a phenomenon embodied in a specific kind of social and territorial environment (Wilkinson, 2019). Community is different from “the community”; for example, Wilkinson, when talking about the community, intends to say “local community” (Wilkinson, 2023).

### *Dimensions of the Community*

Community is a process of social interaction that varies from one community to another. Therefore, definitions enhance misunderstanding, and the concept becomes a buzzword as some sociologists argue that “community is a romantic term” (Wilkinson, 2023, p. 3). Consequently, to avoid further confusion, we don’t offer another definition. However, we elaborate on some common core dimensions, which include people, feelings, relationships, and problems (Figure 2.1). These are shared across diverse communities, specifically in relationship to Stakeholder Theory. These dimensions are similar in old communities – territorial or non-territorial communities as well as recently emerged communities such as – energy communities or natural communities, or online communities.

We are of the opinion that elaborating dimensions better serves the purpose of understanding the community. Furthermore, clarifying the dimensions of community helps us to



*Figure 2.1* Graphical elaboration of dimensions of community

fulfill the prerequisite of science – specificity, which can be achieved by clarifying the dimensions of a concept (Freilich, 1963). Classic literature on the community has specified several dimensions, for example, geographical location or area or place, interaction, identity, and shared goal (Bradshaw, 2008; Hillery, 1955). To explain the local community, Wilkinson explains three dimensions – locality, local ecology, and the process of locality-oriented collective actions (Wilkinson, 2023). Contemporary literature has touched upon two new dimensions – relationship and feeling (Chavis & Lee, 2015); however, detailed description has not been provided. In working towards understanding the aforementioned four dimensions of the community in relationship to Stakeholder Theory, we need to describe “who, how, and why” communities are formed.

### ***Who Forms a Community***

At large, communities are formed by people, whether it is “territory-free” or “territory-based” community (Theodori, 2005). In the Stone Age era or modern technology era, communities were and are formed by people. It is true that an ecological community is formed by other species which are important. However, people act on behalf of these communities. It is worth clarifying that boundaries between communities are fluid. Moreover, people use different labels; for example, the community of place could be named a community of nature or environment, the community of interest in some context by some scholars. In this study, we are looking at communities from a Stakeholder Theory perspective, and, in our opinion, stakeholders are agents; they are able to do things. Stakeholders are individuals or groups; it is about people. Stakeholders must be able to act; they are able to have agency, so they need to act for the environment, but the environment can act for itself. Needless to say, the environment and nature are important, and people must act for their preservation. Thus, the first important dimension of community is people.

### ***How a Community Is Formed***

The community cannot be formed by one person but by a group of people. The force that connects people is a relationship, which creates a sense of association for its members. In other words, a relationship is the way through which two people or groups of people connect with the community. People’s relationships can be with another person or place. Relationships are fundamental to human existence; similarly, they are fundamental to communities’ existence. There are several types of relationships, such as professional, social, intimate, or familial relationships. For the purpose of this study, the communal relationship is a form of interconnectedness and interactions among members of the community. Communal relationships are formed to achieve a shared purpose or solve a common problem.

Similarly, another interrelated element is feeling, which is critical for the formation of a community. Feelings give a sense of belonging to its community members. A feeling in this context is a noun, a feeling of something or about something. Feelings can create communities but also divide them or allow old divisions to resurface, such as in the recent case at Cisco Systems, where the IT professionals’ or IT engineer’s community is powerful; however, recently, a Dalit engineer was discriminated against due to his association with lower caste by two privileged-caste supervisors who are also engineers (Bapuji et al., 2023; Chakravartty & Subramanian, 2021). This is an example of how the caste system, with its prejudices and unequal privileges, can travel from underdeveloped villages to the supposedly well-developed

and sophisticated tech offices of Silicon Valley. This feeling of superiority or inferiority serves as a motivation for people forming new communities or activating old ones and can be directed at another person or place (homeland). It is the feeling that empowers people living away from their native birthplace to do something for the people of their native birthplace community. In one empirical study, Menghwar (2021) found that doctors worked during the COVID-19 crisis for the community because they had strong feelings for people, which is why they took the risk to work during the crisis despite the lack of facilities and resources.

### ***Why Community Is Formed***

People form communities to solve problems, particularly those that individuals cannot solve on their own; however, they affect members of the community homogeneously. The essence of the community lies in taking action to solve a common problem.

In sum, community is about people, feelings, relationships, and organizing to address common problems. These dimensions of the community are aligned with stakeholder theory which states that business is about people's feelings, relationships, and problems, since business is embedded in society (Freeman et al., 2020; Menghwar & Daood, 2021). The stronger the feeling, relationship, and problem, the stronger the community. Community dies when people's feelings and relationships weaken or die, or their problem dies.

These four dimensions of community (people, feelings, relationships, and problems) indicate that external members (people outside of the community) can be a part of the community if they share a feeling or relationship or problem (their land is at stake, for instance). Those in business can become a part of the new community and attempt to help solve the community's problems, as we explain below through empirical examples of organizations that felt compelled to join a community and help solve its problems.

Building on this, we take two communities (The Community of Place and the Community of Practice) because these are often considered neglected communities by businesses; we explain the ways companies meaningfully engage with these communities to address their problem.

### **Examples of Community of Place and the Roles of Feelings and Relationship in Engagement**

At the start, humans fought hard to protect their lands (homelands) from colonial encroachments, and people sacrificed their lives in a freedom struggle to gain back their land.

The community suffered considerable losses in place or land during and after industrialization but remained largely ignored. Initially, Stakeholder Theory considered the community of place or land where a firm operates as an important primary stakeholder (Freeman, 1984). The conventional school of thought considered communities based on geography or place-based communities. In our view the community is about feeling and relationships with the land. For example, immigrants living a reasonably good life in the West, if they have a feeling for or relationship with their homeland, will make an effort to engage with the community for the betterment of their homeland. Though these people have migrated and left their homeland due to social and economic problems, if they have a feeling, they get united and engage in doing work for their homeland; consider the example "SANA- Sindhi Association of North America (Table 2.1 provides the description of organization and examples used in this chapter), established by people of Sindh (province in Pakistan) living in North America.

*Table 2.1* Brief description of the organizations

<i>Organization Name</i>	<i>Description</i>
Lotta Ludwigson	Lotta Ludwigson is a Berlin/Copenhagen-based fashion company founded by Charlotte Piller and Nhu Ha Dao in 2022. This company designs, produces, and takes back circular, regenerative, and fair clothes. The goal is to foster a sustainable transformation of the fashion industry and tackle social, gender and climate injustice. Lotta Ludwigson has successfully crowd-funded; the company reached 201% of our initial funding goal on Startnext and collected over € 50K in pre-orders. For details – <a href="https://www.lottaludwigson.com/">https://www.lottaludwigson.com/</a>
Moxie Scrubs	Moxie Scrubs is a Boston-based company founded in 2021 by Alicia Tulsee. The company manufactures scrubs for nurses which are designed by nurses. The company Moxie stands for force of character, determination, and resourcefulness. Moxie Scrubs raised \$2.4 million in pre-seed funding to launch a brand for nurses, by nurses. For details – <a href="https://www.moxiescrubs.com/">https://www.moxiescrubs.com/</a>
Sindhi Association of North America (SANA)	This is the largest representative body of Sindhi Americans and Sindhi Canadians. The organization has completed many social projects that focused on the development of Sindh. For details – <a href="https://sanaonline.org/">https://sanaonline.org/</a>
Action to Improve Representation (AIR)	The aim of this organization is to improve representation in management scholarship through programs targeted at early career business and management academics from underrepresented groups in South Asia. Details can be found at: <a href="https://air-collective.com/">https://air-collective.com/</a>
FIFCO USA.	FIFCO considers itself as a purpose-driven beer company that prioritizes people, planet, and profit as a way to improve our communities. It is headquartered in Rochester, New York, and is among the top 10 brewers in the United States. <a href="https://www.fifcousa.com/">https://www.fifcousa.com/</a>
Nuova Cucina Organizzata	Social enterprise organization that runs a restaurant located in the town of Caserta, Italy. <a href="https://ncocucina.com/">https://ncocucina.com/</a>
Laughing Bear Bakery	This is a St. Louis non-profit work skills reintegration program for ex-offenders who are working very hard to start a new life. <a href="https://laughingbearbakery.org/who-we-are">https://laughingbearbakery.org/who-we-are</a> .
Daves Killer Bakery	This is a bakery that hires ex-felons in order to integrate them with the community. For details, <a href="https://www.daveskillerbread.com/about-us">https://www.daveskillerbread.com/about-us</a>

Though these people are thousands of kilometers away from their homeland (Sindh), they still engage and make efforts to solve the problems of Sindh. This is not because of physical proximity but feeling and relationship with the land – community of place ([sanaonline.org](https://sanaonline.org), 2023).

Another notable example is AIR (Action to Improve Representation), an organization established by four academics with the support of their colleagues to increase the representation of lower-caste people in academia. The founders of AIR are among the few top management scholars living a good life in the West; however, they have feelings for the people who are victims of caste inequality. Hence, they engage with community through this program to

reduce inequality. The organization explains its purpose on its website “Through AIR; we intend to change this [caste inequality] by providing a platform to support scholars from underrepresented groups in South Asia. We conduct several initiatives, events, and projects to improve social diversity in management academia.”

It is not only about homeland; in general, people’s affiliation with the land has also increased. This is partly because the increase in natural disasters and global warming has brought place or land to the forefront again. In the beginning, the community of place was for physical proximity; for example, if a firm had a factory in a particular area, it was the firm’s responsibility to take care of the nearby area voluntarily or after receiving pressure from affected members of the community.

### **Moving beyond Profits and Trade-offs**

The dominant school of thought believed that if firms take care of place (land), it would involve a trade-off (loss of profits, for example). We have noticed a change in this school of thought; increasingly, people have realized that profits and land protection can go together (Freeman et al., 2020). Entrepreneurs are starting businesses because they have feelings for the land and aim to solve a problem (i.e., protect land or nature) and make profits. Lotta Ludwigson’s mission statement affirms that “Lotta Ludwigson is a slow luxury brand creating fair, circular & timeless business attire for conscious minds with the ambition to make circularity the new norm.” The company was started to solve an environmental problem and meet the demands of people who want to wear re-cycled clothes.

Both entrepreneurs and investors have realized that trade-offs can be avoided. Moreover, many investors think beyond money and profits to the potential impact of the business; for instance, when Lotta Ludwigson launched a reward-based crowdfunding campaign, it raised a good amount within a week. Despite its being a new company, people trusted it and invested money, as evident in documents and announcement on their LinkedIn profile: “Lotta Ludwigson is successfully crowd-funded! We reached 201% of our initial funding goal on Startnext and collected over 50K in pre-orders” (Lotta Ludwigson, 2023).

We found that entrepreneurs cater to the problems of affected stakeholders (in this case, place) by forming the community. Instead of starting a company alone, multiple entrepreneurs collaborate to start an organization together; for example, Lotta Ludwigson was founded by two colleagues, and AIR for Action was established by four academics.

There are several other examples of collective entrepreneurship. For instance, FIFCO was started by two brothers in Costa Rica in 1908 (About Us, 2020); now, it is a \$1 billion food and beverage company (Freeman et al., 2020). Another example, Indus Hospital, located in Karachi, Pakistan (now known as Indus Hospital & Health Network due to its exponential growth), provides healthcare services to underprivileged people and was established by four entrepreneurs (Menghwar, 2021).

After establishing the firm, entrepreneurs also engage with related communities; for example, in the case of Lotta Ludwigson, founders regularly engage with the impact community of entrepreneurs. We found that the impact community is a coworking space and hub for mission-aligned offices. The goal of the community is “Empowering people and organizations to build innovative solutions for people and the planet” (berlin.impacthub.net, n.d.). Founders of Lotta Ludwigson engaged with this community because they believe that the planet can be protected through collective action and collaborative efforts. Similarly, some other organizations engage with neighboring communities to sustain their work. Cavotta and

Mena (2023) cite one notable example in their study on the Italian work integration social enterprise organization called “Nuova Cucina Organizzata.” This firm engages with the community to achieve its core purpose of reintegrating people with mental health issues (Cavotta & Mena, 2023).

A crucial outcome of these internal and external collaborations is that organizations can create value for affected and unaffected communities simultaneously and, more importantly, while avoiding a trade-off in serving multiple communities. For example, Nuova Cucina Organizzata is helping people with mental health problems to integrate into society by providing jobs and housing; at the same time, it is involved in the anti-mafia movement (Cavotta & Mena, 2023). Similarly, Lotta Ludwigion is serving the central stakeholder – customers – as well as protecting land by producing clothes in a circular way and encouraging women’s entrepreneurship.

**Community of practice.** The term community of practice was coined by Lave and Wenger in 1993, which is defined as “an activity system about which participants share understandings concerning what they are doing and what that means in their lives and for their community. Thus, they are united in both actions and in the meaning that that action has, both for themselves and the larger collective”. (Lave and Wenger, 1993, p. 98). Advocates of stakeholder theory define the community of practice in relation to stakeholder theory as “professional work groups united by a sense of shared interests, values, and purpose” (Dunham et al., 2006, p. 35). Usually, the community members are practitioners in a particular field and are united under the umbrella of professional work. In an organization, there can be several communities of practice: for example, in a hospital there is a community of physicians and a community of nurses. In the community of practice, the practice or job is a central feature on which the community is formed and the people involved support, encourage, and integrate with each other or learn best practices from each other.

### **Role of Collaborative Engagement in Creating Value for Organizations and Marginalized Communities**

As explained above, in this study, we consider feeling a central component of the community. We see that an entrepreneur (outside of profession or job) engages with the affected community to serve the community of practice because the person has feelings for the community. For example, Alicia Tulsee, a non-nurse, started a company (Moxie Scrubs) that manufactures scrubs for nurses; her inspiration, she explains, were “the nurses who cared for my aunt and father, who were unwell for a long time. Nurses took good care of them; they treated us well; I realized how giving and caring this profession is; they play an integral role by interacting with patients, their families, doctors, etc. However, there was no “nurse first brand”. When I came to know this, I decided that I will create a brand for them. I felt and realized that nurses play a vital role in giving health care, so my company is for nursing professionals (Moxie Scrubs, 2022).

Nursing is a mostly ignored professional group. As a consequence of this, the majority of nurses were happy to help Moxie Scrubs, as was the American Association of Nurses, whose representatives were happy that a business was prioritizing nurses and offered to partner with the company. Slowly, Moxie Scrubs built a community around the brand to support and empower the nurses. The company’s website featured a blog called Nurse Voices; nurses write blogs to help and support nurses in their careers. As a result of collaborative engagement with nurses, the firm has managed to build a brand for nurses and by nurses. Nurses who are

customers believe that scrubs are suitable for long shifts, and 40% of the company's revenue is generated from repeat purchases of nurses.

Another notable example is the Laughing Bear Bakery in St. Louis, which hires people with criminal records. Giving a second chance to people who have made a mistake gives hope for a better future to people and forms a community that cares for people with a criminal record. This organization helps these men and women in resetting their lives by integrating them with the community. As explained by Eric, one of the employees, "When I was first released from prison, the team at Laughing Bear Bakery welcomed me with open arms and treated me with respect and dignity. They made me feel part of the family" (Testimonials, 2024).

Laughing Bear Bakery is not the only one; Dave's Killer Bread, along with other bakeries, hires ex-felons. These organizations hire and get involved with marginalized community members (ex-felons) to serve other communities and help them in becoming part of the community. As a result of the collaborative engagement with these marginalized community members (nurses and felons) in creating a product and brand, estranged individuals have become part of the community, resulting in a win-win for all.

## **Discussion**

We started this study with the historical evolution of Stakeholder Theory and the term meaningful stakeholder engagement, then explained the concept of community. As is often the case in research, scholars offer definitions to bring clarity; however, in the end, multiple definitions further bring complexity and confusion (Menghwar & Daood, 2021). This is exactly the case here – specifically with the terms stakeholder engagement and community (Kujala et al., 2022; Theodori, 2005). We discovered that the concept of stakeholder engagement lacks a unified definition and is fragmented under different labels (Kujala et al., 2022). Similarly, we found that community is a term used in different fields, and there are multiple types of communities (Dunham et al., 2006; Theodori, 2005). Hence, one definition will not bring specificity but muddle. Thus, we focused on illustrating the dimensions of community with respect to context, which we believe would clarify the term and its implications.

We contribute to the literature in two ways. First, we describe four dimensions of community – people, feelings, relationships, and problems. These four dimensions are the foundation of a community. Although scholars have touched on these dimensions, there is no detailed explanation provided (Chavis & Lee, 2015). In this study, we explain that community is about people's relationships and feelings with place or environment, or digital object; if people have feelings and relationships, they can form a community or become part of an existing community. Another dimension is 'problem'; people form communities to solve a problem. For instance, a nature lovers' community is formed to address the problems of the environment, and nurses have formed a community to solve the common problems they face at the workplace.

Second, we contribute to the literature on stakeholder engagement by explaining ways through which an organization can engage with marginalized stakeholders. We chose two types of communities: community of place and community of practice (Dunham et al., 2006). We explain that there is not a single universal engagement strategy that fits all communities. Organizations need different processes for meaningful engagement with each community. For example, Lotta Ludwigson and Air for Action engage with the community of place through collective entrepreneurship. On the other hand, organizations such as Moxie Scrubs and bakeries working for felons have used the collaborative engagement strategy to become part of the community and slowly create a brand around the community.

The outcome of such a meaningful engagement approach addresses the myth that marginalized communities cannot be served in isolation. However, organizations can serve the interests of multiple communities together. The meaningful stakeholder engagement approach works well for serving affected and non-affected communities. We have explained how firms involve two communities, but our work is based on a few examples, so it cannot be generalized to all communities. We found that there is a limited amount of empirical work regarding engagement and involvement of communities and serving multiple stakeholders (Kujala et al., 2022). Thus, it offers ample avenues for future research. We believe more research would be useful to better understand the strategies used by organizations to engage and address the concerns of different communities. With few exceptions (Buhmann, 2017; Dunham et al., 2006), the researcher has largely ignored the question, “How can a firm meet the demands of multiple communities simultaneously?” Additionally, we need more research on community construction and how a firm can develop and practice meaningful engagement with communities. We have many communities and quite a few of them, Indigenous People and those in rural and remote communities, for example, are vulnerable. We argued that a different strategy is needed to address the concerns of each community; this argument calls for empirical research, an examination of the unique processes and strategies firms adopt, as well as the challenges, pitfalls, and benefits of each approach. Another question that demands attention is what regulations and conditions are required for balancing stakeholder power and delivering sustainability (Buhmann, 2018). The more we learn about the interaction of organizations with their communities, the better position we will be in to sustain our communities.

### **Concluding Remarks**

Our purpose in this study was to study the community in relationship with Stakeholder Theory (Freeman, 1984) and to understand how an organization can meaningfully engage with affected communities. It was not our goal to claim that community can be assessed from one theoretical perspective. Therefore, in this chapter, we have emphasized that community is a social process of interaction for people and can be understood better through its dimensions with respect to a particular approach or theory. While researchers can explain other dimensions and processes through which organizations can engage with communities, we believe our approach covers central tenants of the community and processes of meaningful stakeholder engagement.

### **Notes**

- 1 Stakeholder Theory, Stakeholder Engagement, and Community – scholars have put forward a wide range of definitions of three terms to bring clarity but brought only more ambiguity.
- 2 Collective entrepreneurship is an entrepreneurial approach in which two or more entrepreneurs work together to establish a business.

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# 3

## REFLECTIONS ON THE MEANING OF “COMMUNITY” IN INCLUSIVE STAKEHOLDER ENGAGEMENT\*

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### **Conceptualizing “Community” in Stakeholder Engagement**

The term “community” is routinely invoked in the context of stakeholder engagement processes. These stakeholder engagement processes include a wide range of activities, frameworks, and contexts, such as expectations related to Corporate Social Responsibility (CSR), Impact Assessment, and the implementation of Free, Prior, and Informed Consent (FPIC) (Friedman & Miles, 2006). The widespread use of the term “community” in these diverse contexts raises critical conceptual questions: How do we define and understand community? Who is acknowledged as a member of the community, and so worthy of inclusion in stakeholder engagement processes that should be experienced as meaningful by their participants (as per Buhmann et al., 2024, Introduction to this volume)?

To address these questions, we explore various conceptualizations of community and provide a more nuanced understanding of affected communities as a pluralistic concept with often fuzzy boundaries (e.g., see Clark, 1973; Delanty, 2009; Walsh & High, 1999). It is critical to note that communities are multifaceted and not solely formed by shared identities and collaboration; they are also shaped by points of tension, conflict, and divergence. Our conceptual discussion is indebted to Nancy Fraser’s arguments on the politics of recognition, which is a useful complement to established stakeholder theory. Fraser (2000) argues for the necessity of acknowledging individual and group identities in a manner that sustains equal dignity or status, which highlights the dynamics of inclusion within a community. Recognition of justice does not merely involve appreciating the uniqueness of identities, but it involves disassembling institutionalized patterns of cultural value that suppress some individuals or groups while privileging others. Applying this perspective to the context of stakeholder engagement highlights the need to ensure that diverse voices and perspectives – particularly

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those often marginalized or excluded – are recognized, heard, and valued in stakeholder engagement processes for these to be experienced as inclusive and meaningful. In other words, this emphasizes the importance of structuring stakeholder engagement processes to be inclusive of those impacted or otherwise affected. The process of identifying affected communities is often not straightforward. There is a tendency to idealize or mistakenly identify certain groups as the most impacted. This can occur due to a range of factors such as the visibility of certain communities, historical engagement patterns, or assumptions based on who is most vocal. Such misidentification risks overlooking other communities that, although less conspicuous, may also be impacted by projects, including those driven by external actors.

In this chapter, we provide an overview of place-based, cultural, and relational (or network-based) understandings of community. First, we review the conceptual foundations of these diverse ways of thinking about community. Then, we provide illustrative examples from research on energy development (large-scale hydroelectric; oil and gas) in Atlantic Canada and Norway to illustrate how diverse ways of conceptualizing community are already implicitly at play in stakeholder engagement that is inclusive. We acknowledge these different conceptualizations represent an ideal type. In reality, groups and individuals often transcend the boundaries of this typology, fitting into multiple categories simultaneously.

This leads us to ask: How do the uses of different conceptualizations of community impact who is identified and included as affected stakeholders in engagement processes? What are the implications for practices of stakeholder engagement of how a community is conceptualized in terms of whose voices are deemed most significant and included in the process? These questions guide our exploration and analysis, which deepens our understanding of how the conceptualization of affected communities has real implications for project development and governance.

As noted in the introductory chapter to this volume (Buhmann et al., 2024), stakeholder theory distinguishes between directly affected stakeholders – whose livelihoods, rights, and wellbeing may be put at risk from development projects – and interested, but unaffected, stakeholders with interests in a project whose rights or livelihoods are not directly put at risk (see also Friedman & Miles, 2006). From this perspective, it is important to ensure that affected stakeholders experience engagement as inclusive in terms of recognition, procedural fairness, and equitable distribution of risks and benefits of development. We extend this discussion by raising questions about who is recognized as constituting the communities affected by projects, such as regarding energy production, and who is given space to speak on behalf of these affected communities. As such, we soften the boundaries between affected and non-affected communities. We suggest that this may be seen as more of a continuum of more and less directly affected – rather than a binary of affected versus unaffected – for the purposes of identifying stakeholders for inclusion in stakeholder engagement processes. This conceptual discussion therefore has implications for identifying the communities that are affected so that stakeholder engagement is appropriately inclusive and thereby experienced as meaningful.

### ***From Rural Beginnings: Understanding the Place-Based Nature of Community***

Outlining the conceptual roots of community helps us comprehend the evolution and present-day uses of the concept. The concept of community is characterized by a fluid and evolving nature, dating back to classical definitions of community that reflect the localized polis of ancient Greece (Delanty, 2009). However, as the social sciences emerged after the industrial revolution and increased urbanization in Europe and North America, understandings of

community shifted significantly. Ferdinand Tönnies' distinction between "Gemeinschaft und Gesellschaft" (community and civil society) became an especially influential early sociological distinction that continues to inform contemporary understandings of community (Clark, 1973; Delanty, 2009). Tönnies described Gemeinschaft as typified by close-knit, organic relationships, which are often found in traditional rural and small village settings. These relationships are characterized by personal, direct, and enduring social bonds, with an emphasis on mutual aid and shared values. Conversely, Gesellschaft refers to social relationships that are more formal, impersonal, and transactional, commonly associated with structured, organized settings (Tönnies, 2001). It is important to note that while these traits are commonly observed in traditional or rural communities, Tönnies' concept of Gemeinschaft is not exclusively tied to these settings. Likewise, other conceptual discussions of community argue that place-based communities are not solely about geographical proximity or locality, but are also constructed through shared social bonds, affinities, and collective identities (Clark, 1973; Delanty, 2009; Tice et al., 2019; Walsh & High, 1999).

Place-based understandings of community have enduring influence. A place-based understanding of community emphasizes the significance of shared inhabitation and experience of a landscape in creating and maintaining communal bonds and collective identity. As Tuan (1990) argues, the "affective ties with the material environment" and the "feelings that one has toward a place because it is home, the locus of memories, and the means of gaining a livelihood" are dynamics that give shape to place-based communities (Tuan 1990, p. 83). The common experience of a specific place, its physical features, shared histories, and collective challenges and opportunities shape the communal identity, especially in rural places (e.g., Brinklow & Gibson 2017; Slawinski et al., 2023). This is relevant to MSE as the development projects that require stakeholder engagement are often located in rural places, where this understanding of community may be taken for granted by governments or proponents.

However, place-based communities are not homogenous. They contain conflicts, inequalities, and differences that challenge the romanticized image of cohesive, rural communities. Binary conceptual distinctions can underplay the diversity within and between communities, ignoring the fluidity of human associations that may not fit into the framework of Gemeinschaft. The idea of a uniform, unchanging community is limiting and fails to account for intra-community differences, power imbalances, evolving identities, and the dynamism of social life (Walsh & High, 1999). This binary way of envisioning community can create problematic perceptions in stakeholder engagement, for example by assuming a homogeneity or consensus around community interests that does not accurately reflect the diversity of views within the community, or by over-relying on designated leaders or the loudest voices as representatives of the community as a whole.

Freeman's (1984) stakeholder theory originally focused on corporate strategy and business ethics. This perspective provides insights that can be adapted to the broader context of inclusive stakeholder engagement in place-based communities. While Freeman's work primarily addressed corporate stakeholders, the principle of inclusively considering all interests is highly relevant to community engagement (Freeman, 1984). This calls for stakeholder engagement that ensures all voices are heard and accounted for in decision-making processes. This adaptation of Freeman's theory to inclusive stakeholder engagement emphasizes the need to understand diverse stakeholder interests, especially in terms of power dynamics, for effective and ethical decision-making in community contexts.

Donaldson and Preston (1995) advance stakeholder theory and emphasize the significance of communities as crucial stakeholders, advocating for an approach that acknowledges the

evolving and interconnected nature of their interests within the broader stakeholder framework. This aligns with the idea that communities encompass various stakeholders with intrinsic value, each contributing to the communal identity in unique ways. Mitchell et al. (1997)'s framework of stakeholder salience, though originally proposed for an economic context, is instrumental in understanding the dynamics of inclusive stakeholder engagement. This framework helps to evaluate the influence and importance of different stakeholders in various community settings by defining three critical attributes: power, legitimacy, and urgency. In rural areas, stakeholders with significant power and legitimacy often include local authorities and influential community figures. These individuals or groups, recognized for their roles and influence, play a key role in decision-making, especially in contexts such as natural resource extraction. By contrast, those with urgency are typically the residents whose lives and livelihoods are directly impacted by community decisions. An inclusive approach to stakeholder engagement in these contexts must acknowledge the asymmetries of power, the diversity of legitimate interests, and the varying degrees of urgency that characterize the stakeholder landscape. By adapting these theories to the context of inclusive stakeholder engagement, we can better understand and address the complexities of engaging with diverse communities. This approach ensures that engagement strategies are equitable, effective, and reflective of the diverse and dynamic nature of communities, thereby contributing to a more inclusive and meaningful engagement process.

The vision of communities as constituted by a shared place-based identity and cohesive social ties continues to influence contemporary stakeholder engagement. This is particularly true in rural settings where natural resource extraction often takes place. The binary view of communities as either *Gemeinschaft* or *Gesellschaft* risks oversimplifying rural social dynamics, potentially leading to engagement strategies that overlook the mosaic of interests, identities, and power relations that define real-world communities (e.g., Reed & Parkins, 2013). By embracing an inclusive definition of stakeholders and recognizing the dimensions of power, legitimacy, and urgency, we may create stakeholder engagement processes that are equitable, effective, and more reflective of the diverse and dynamic nature of place-based communities.

### ***The Importance of “Imagined Communities”: A Cultural Conception of Community***

In today's increasingly interconnected world, the notion of community extends beyond physical proximity and shared local experiences. Freeman's emphasis on stakeholder inclusivity, as well as Mitchell et al.'s emphasis on power, legitimacy, and urgency, provides a foundation for recognizing a wider array of stakeholder groups. Moving beyond the classical formulation of communities as place-based clusters of people, as seen in the work of Tönnies and others, our understanding of communities has shifted. Globalization, technological advancements, and shifting sociopolitical landscapes have contributed to this change. Anderson's (1991) work on nationalism broadens our conventional understanding of community. He argues that nations, despite their extensive geography and the impossibility of all members ever meeting, could still be understood as communities. These communities are not defined by physical, face-to-face social ties but rather through shared experiences, histories, language, and symbols that create a sense of collective identity. He argues that the historical rise of mass media played a vital role in fostering a sense of “imagined community” among members of a nation. The uniformity of language used in media created shared cultural spaces that allow people to see themselves as part of a larger community (Anderson, 1991).

The concept of imagined communities extends further in the digital age. Castells (2009) illuminates how digital technologies have reconfigured our understanding of communities. With the digital revolution, new social spaces have been created where geographic boundaries are not a barrier to social interaction or the formation of meaningful relationships. The “network society,” as conceptualized by Castells et al. (2009), redefines community relationships to include those facilitated by enhanced online connectivity and interaction beyond traditional physical boundaries.

New social movements emerged based on imagined communities. Melucci (1980) emphasizes that these new social movements are less concerned with economic redistribution and more focused on issues related to identity, quality of life, human rights, and culture. They are distinct from older movements because they transcend geographical boundaries, traditional organizational structures, and political ideologies. Instead, they coalesce around shared interests, beliefs, and values, thereby aligning with the concept of imagined communities.

The Internet and digital technologies have weakened (though not replaced) the place-based foundations of community formation. These tools enable geographically distant individuals to connect, interact, and form communities based on shared interests and beliefs. Social media platforms provide the critical infrastructure for the organization, mobilization, communication, and even the identity formation processes of new communities and social movements. The widespread adoption of digital technologies allows individuals from different geographical locations to form a “cosmopolitan community” that bridges local and global (Delanty, 2009). These communities take shape as people engage in collective action to address shared concerns, such as environmental sustainability, human rights, or social justice (Castells, 2004, 2015).

The recognition of imagined communities has consequences for stakeholder engagement. Stakeholder engagement is often tied to geographical location, focusing on local issues, face-to-face interactions, and decision-making. The emergence of imagined communities – where claims about the risks and impacts of development may be de-localized from those who are most directly affected in terms of livelihoods and wellbeing – suggest forms of engagement that extend beyond local places. Here, an expanded range of individuals and groups may seek out opportunities for meaningful engagement on behalf of those affected by development. Forms of involvement can range from participating in online discussions and campaigns to providing financial support or using digital platforms for advocacy. Consequently, community involvement potentially expands from a local, physically bounded activity to extend to digitally mediated processes.

Examples can be found in the movements centred on climate justice or energy justice. The imagined communities that arise from these movements are bound by their shared interests in addressing climate change and pursuing energy equity. These communities are not confined to a particular locality; instead, they are global in scope, including individuals and groups from different countries, cultures, and backgrounds. These communities represent a shared collective identity that is socially constructed (Bulkeley et al., 2013; della Porta & Parks, 2014; Gerbaudo, 2012). For instance, the global Fridays For Future movement, primarily led by young people, demonstrates a community united not by geography, but by a shared concern about climate change and its impact on future generations and ecosystems as part of their vision of community that deserves recognition and inclusion in meaningful engagement about development (Molder et al., 2022).

This expansion from place-based to imagined forms of community raises questions about how we should understand who makes up the affected communities that should be included

in stakeholder engagement. This shift introduces new challenges, such as the potential risk that the engagement process becomes de-localized from those who are most directly put at risk or negatively impacted by development projects. At the same time, unequal access to digital technologies can create disparities in participation, while the absence of face-to-face interaction can make community building and maintenance more challenging. Moreover, these communities' extensiveness and diversity can complicate consensus-building and decision-making. Thus, the inclusion of imagined communities may require strategies for stakeholder engagement that can anticipate these challenges for the process to be meaningful for those who are at risk or actually affected by a project or other intervention.

Recognition of imagined communities as potential stakeholders opens possibilities for forms of engagement that incorporate a broader range of perspectives. This shift in our understanding of affected communities suggests the need for flexible and inclusive approaches to engagement with such stakeholders. However, it is also essential to ensure that engagement strategies remain equitable and effective for those whose place-based livelihoods and wellbeing are most directly impacted.

### ***Social Networks: A Relational Conception of Community***

A social network approach understands communities as relational, or built on sustained patterns of social interaction, rather than solely on place-based belonging or shared cultural identity (Walsh & High, 1999). Here, the concept of a social network underscores the relationships and interactions among individuals, groups, or institutions. Granovetter (1973) emphasizes how casual acquaintances can be crucial in giving people access to new information and opportunities. Similarly, Rainie and Wellman (2012) describe how people use their personal networks to obtain information, resources, and support. Thus, we see how social networks are a dynamic web of relationships that serve as a channel for information and resources. Social network communities are cultivated around common goals or interests, which can span professional networking, activism, or hobby groups, which weave individuals into a collective entity (Crossley, 2011; Diani, 2015).

Collaboration stands as a key attribute of social network communities (Castells & Cardoso, 2006). Members engage in cooperation and assistance, sharing their resources, skills, and knowledge to fulfill shared objectives. This collaborative pattern is observable in a variety of settings, from professional teams collaborating on a project to neighbours lending a helping hand in times of need (Saunders, 2007, 2013). In the era of digitization, these communities have evolved into knowledge and resource exchange centres, where members spread news, advice, or mutual support (Diani, 2003; Earl & Kimport, 2011; Saunders, 2007).

Social network dynamics also include conflicts and disagreements. Conflicting views, interests, and priorities may surface. This can lead to discord among community members. These differences can also provide opportunities for dialogue, negotiation, and consensus-building, which can strengthen network ties and collective identity. Thus, social network communities can either enhance or, at times, present a challenge to inclusive stakeholder engagement. For instance, in Taiwan, offshore wind farm projects often face protests due to the lack of clear community definitions, leading to unbalanced power relationships among stakeholders or an absence of comprehensive information (呂欣怡, 2020; 陳穎峰, 2021). A relational or social network conception of community also has implications for stakeholder theory and practices of stakeholder engagement. Affected communities are conceptualized as individuals or social groups, with particular attention to vulnerable people, including rural and remote communities



(Buhmann et al., 2024, Introduction to this volume). A relational conception of community turns our attention to the various formal organizational networks and informal social networks that emerge as collective actors to speak on behalf of groups of impacted individuals in stakeholder engagement processes.

### **How Do Different Understandings of ‘Community’ Shape Inclusive Stakeholder Engagement?**

We have provided a typology of diverse ways of conceptualizing community to underscore the importance of adaptable stakeholder engagement strategies that acknowledge the diversity of types of communities that may see themselves as deserving recognition as affected stakeholders. The unique facets of each way of conceptualizing community – place-based, cultural, or relational – assume different approaches to stakeholder communication and engagement. Place-based communities might require personalized, face-to-face engagements and initiatives with local relevance. Cultural or imagined communities, on the other hand, may prefer online spaces that remove geographical limits to participation. As for social network (or relational) communities, stakeholder engagement strategies may emphasize drawing upon the community’s networked capacity for collaboration and information exchange, managing conflicts, and using digital platforms for broader involvement.

However, it is important to recognize the potential impacts for inclusive stakeholder engagement associated with engaging distinct types of communities. Unequal access to digital technologies could hold back engagement with cultural or relational communities. Also, oversimplified perceptions might lead convenors of stakeholder engagement to undervalue the diversity inherent within place-based communities. Therefore, stakeholder communication should be attentive to these challenges by promoting inclusivity and ensuring that contributions from multiple voices and multiple communities are recognized and valued.

### ***Examples of the Multifaceted Nature of ‘Community’ in Stakeholder Engagement: Cases and Methods***

This chapter is intended as a conceptual exploration of diverse ways of understanding who constitutes affected communities for the purposes of stakeholder engagement, bearing in mind the need for the process to be meaningful and particularly so for affected stakeholders. In the remainder of the chapter, we illustrate this conceptual typology using examples of engagement in energy development projects from Newfoundland and Labrador (Atlantic Canada), and Norway. We focus on these cases in part because they have been the subject of interest for the second author across multiple previous and ongoing research projects (see Stoddart & Burt, 2020; Stoddart et al., 2020a, 2020b). These cases share notable similarities and differences. Both cases share north Atlantic and high northern coastal geographies, as well as substantial economic dependence on the oil and gas sector, including the presence of the company Equinor as a major player in both regions. On the other hand, there are notable differences. Newfoundland and Labrador is a subnational jurisdiction within a federalist polity with a liberal market economy. Norway, by contrast, is a more consensus-oriented and corporatist political system with a coordinated market economy (Hall & Soskice, 2001; Lijphart, 2012).

For the first case, Muskrat Falls, we analyzed grey literature, followed by semi-structured research interviews as supporting data, to reflect on how various forms of communities are

included in processes of stakeholder engagement. For the second case, on energy development projects in Norway, we draw upon document analysis of a broad range of grey literature related to stakeholder engagement processes in energy development projects (oil and gas; large-scale hydroelectric). Our purposive sample of documents includes corporate websites and reports, impact assessment documents and civil society web content, including from Indigenous groups and environmental non-governmental organizations (ENGOS). Document coding and analysis was conducted with the assistance of NVIVO software for qualitative analysis.

Throughout the subsequent discussion, we use social network analysis tools to visualize relationships between social actors (grey nodes in Figures 3.1–3.3) and discursive themes (black nodes in Figures 3.1–3.3) contained in documents related to stakeholder engagement. This application of network analysis to documents as a way of visualizing patterns of relations among thematic coding and social actors is called Discourse Network Analysis and is increasingly well used in studies of public policy networks and media discourse (Leifeld, 2017, 2020).

An important qualification is that our purpose is not to engage in a detailed comparison or synthesis across the cases we are using. Rather, we use these examples to illustrate our typology of ways of conceptualizing community because it is important to have a clear sense

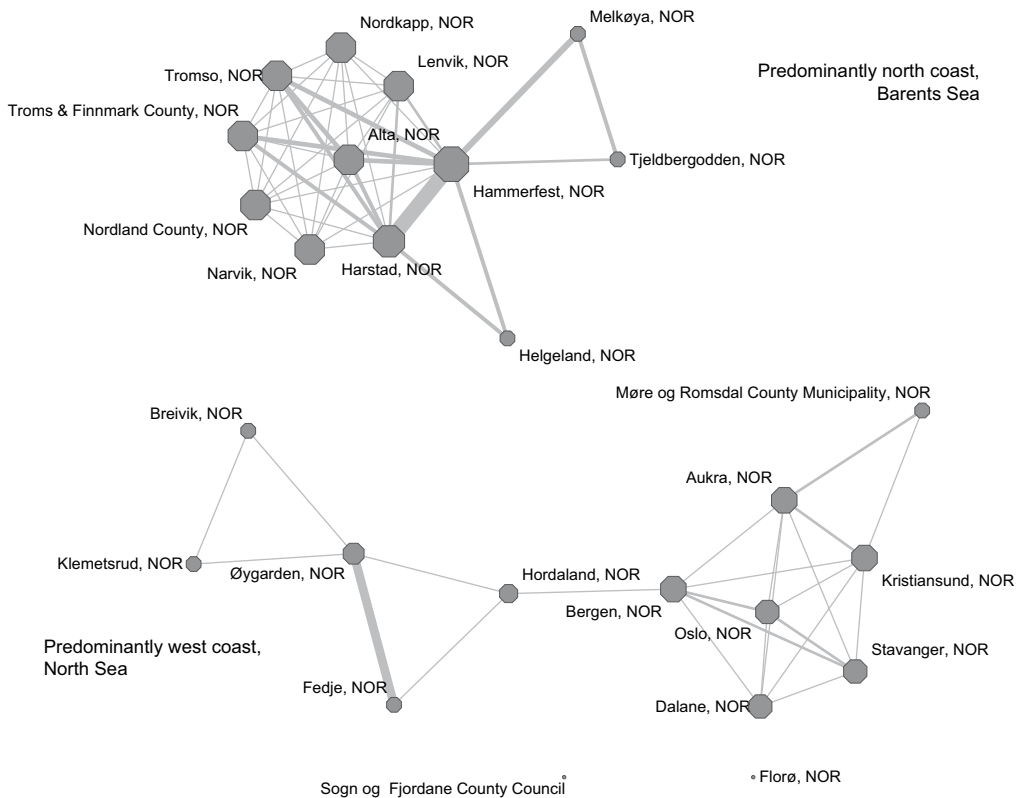


Figure 3.1 Social network diagrams of identified communities

Note: 1-mode discourse network, showing links between communities based on coding co-occurrences (node size = centrality, tie thickness = # of common documents).

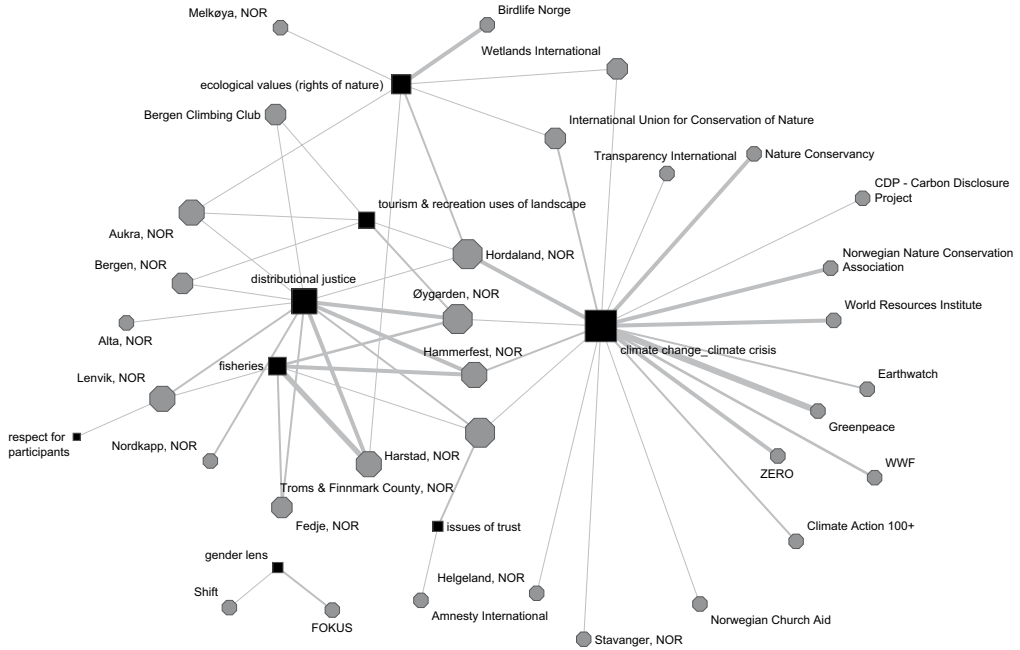


Figure 3.2 Two-mode network diagram of stakeholders and distributive/procedural justice issues

Note: 2-mode discourse network, showing links between community and NGO actors (grey octagons) and themes related to distributive and procedural justice claims (black squares), based on co-occurrences within documents (node size = centrality, tie thickness = # of common documents).

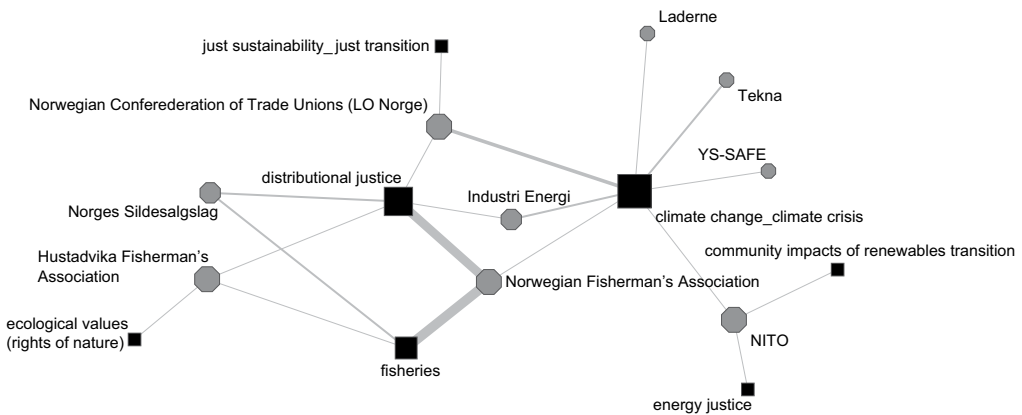


Figure 3.3 Two-mode network diagram of actors and concerns

Note: 2-mode discourse network, showing links between labour actors (grey octagons) and themes related to distributive and procedural justice claims (black squares), based on co-occurrences within documents (node size = centrality, tie thickness = # of common documents).

of who is already being included in stakeholder engagement practices, beyond the theoretical or normative frameworks of who ought to be included. Without mapping current constellations of who is already being included in stakeholder engagement, it is harder to identify gaps in which affected communities are at risk of not being meaningfully included and engaged.

### **Place-based and Cultural Communities as Stakeholders: The Muskrat Falls Case**

The Muskrat Falls hydroelectric project in Labrador, North-Eastern Canada, is an example of the interplay between place-based and cultural communities in stakeholder engagement. This project, notable for its environmental risks and negative economic impacts, attracted attention not only from directly affected local communities, including Indigenous groups, but also from broader, geographically dispersed intervenors.

In the initial stages of the project, when the Newfoundland and Labrador (NL) government, NL Hydro, and Hydro-Quebec were formulating the project plan (around 1997–1998), stakeholder engagement predominantly focused on the Innu Nation, primarily due to their geographic proximity to the proposed dam site (Government of Newfoundland and Labrador, 1998). This early focus reflects a traditional, place-based approach to stakeholder identification, which, at this stage, did not fully consider the broader spectrum of communities that would be affected by the project.

As the project developed and awareness of its potential environmental impacts grew, the stakeholder engagement process expanded. After 2016, more communities, including the local governance institutions of Indigenous peoples, i.e. the Nunatsiavut Government and NunatuKavut Community Council, became involved, marking an expansion of place-based community engagement. This expansion was a response to growing concerns and public protests, especially regarding environmental issues like mercury contamination, which were not confined to a single community (Allen 2017; Atlin & Stoddart, 2021).

An Independent Expert Advisory Committee (IEAC)<sup>1</sup> was established on October 25, 2016, as a response to expanding conflicts and concerns. This forum involved representation from the Government of Newfoundland and Labrador, the Nunatsiavut Government, the Innu Nation, and the NunatuKavut Community Council. The IEAC was tasked with using scientific research and Indigenous knowledge to assess and recommend mitigation strategies for methylmercury impacts from the Lower Churchill Project, focusing on protecting the health of place-based Indigenous and settler communities. The creation of the IEAC was not only a response to the need for broader and more inclusive stakeholder engagement but also demonstrated how stakeholder engagement can become more meaningful when the voices and advice of a diverse group of stakeholders are heard and considered.

Despite these efforts, residents like those in the town of Mud Lake felt that their concerns were still not fully addressed. Our interviews revealed ongoing fears and doubts among these communities, particularly following downstream flooding in 2017 that displaced community members and which many ascribed to water-level (mis-)management at Muskrat Falls. Additionally, concerns related to the project’s transmission lines further highlight the challenges in fully engaging place-based communities in the decision-making process.

Parallel to these local concerns, cultural communities formed through digital platforms, including around the hashtag #MakeMuskratRight. Before 2016, no major news sources conducted investigative journalism on the project. However, a few websites, such as

UncleGnarley.com, the independent.ca, the Grand Riverkeeper Labrador website, and the Labrador Land Protectors Facebook Page, played a crucial role in raising awareness and mobilizing support beyond the geographical confines of Labrador (Crocker & Moore, 2021). These social media-based communities – though not all representing directly impacted communities – did influence the broader public discourse and brought national and international attention to the project. These cultural communities also demonstrate the power of digital connectivity in contesting the perceived limits and failures of formal stakeholder engagement processes.

The Muskrat Falls case underscores the importance of recognizing a wide spectrum of impacted groups in stakeholder engagement. It demonstrates the need for adaptability and inclusivity in MSE processes, acknowledging both the traditional, place-based definitions of community and broader, digitally formed cultural communities. This case illustrates that project proponents and governments may overlook some affected stakeholders because of how boundaries are drawn for the partial inclusion of place-based communities. At the same time, those who use the Internet to create cultural communities can assist in creating parallel forums for stakeholder engagement that raises critiques and concerns about failures to make formal processes sufficiently inclusive and accessible to be meaningful for all affected individuals.

### **Multiple Forms of Communities as Stakeholders: The Norway Case**

The Muskrat Falls case highlights the complexity of identifying and engaging with place-based communities, but also underscores the growing influence of cultural communities. This highlights the evolving nature of stakeholder engagement, a theme we further explore in the context of engagement around energy projects involving Equinor – Norway’s largest domestic oil sector actor – and Shell, a transnational oil company.

Figure 3.1 is a social network diagram that visualizes the mentions of identified communities (municipalities and counties) across all data sources related to the Norway case. Here we see clusters of municipalities and counties that are included as formal representatives of place-based communities. One of these clusters is centred around the north coast and Barents Sea in the Arctic, while the other cluster is rooted in the west coast and North Sea (Figure 3.1). The Equinor corporate website and related reports frequently invoke their engagement with municipalities, which range from large regional centres like Bergen (population 269,548), to northern oil and gas host communities like Hammerfest (population 7,882) and several other smaller communities.<sup>2</sup> Similarly, a range of municipal actors appears in impact assessment documents as intervenors for Equinor and Shell project proposals.

At the core of the Barents Sea cluster, the most central communities include Hammerfest (population 7,882) and Harstad (population 21,289), which are well connected with each other in terms of coding co-occurrences. While this cluster has an obvious core, focused on Hammerfest and Harstad, it is also densely interconnected, suggesting that similar groupings of communities are frequently incorporated into processes of stakeholder engagement. By contrast, the North Sea cluster is sparser with fewer recurring interconnections. This suggests that there is less consistency and cohesion in terms of which communities are included in documents related to stakeholder engagement in this region.

The repeated invocation of municipalities and counties as community stakeholders in our Norwegian data raises important points for stakeholder engagement to include affected stakeholders. First, it is important to ask whose interests and experiences municipalities

represent within stakeholder engagement processes. Municipalities also vary by size, with those included in the figure ranging from small settlements of less than a thousand people (e.g., Aukra, population 988; Fedje, population 382) to cities in the thousands or tens of thousands range (e.g., Alta, population 15,931; Hammerfest, population 7,882; Harstad, population 21,289; Narvik, population 14,051; Tromsø, population 41,915). Larger municipalities, such as Bergen (population 269,548) and Stavanger (135,514) in the North Sea cluster, often serve as regional hubs, where services and company offices may be headquartered. These municipalities may have quite different vested interests in stakeholder engagement processes and outcomes than smaller or more remote communities.

Second, it is important to inductively map out who is already being included in existing practices of stakeholder engagement and is thereby already recognized as affected communities by the corporate actors and governmental decision-makers that are responsible for structuring engagement processes. Conversely, it is also important to recognize the gaps in these practices, to understand who may not be meaningfully engaged or represented in these processes. This comprehensive mapping is crucial for identifying underrepresented or overlooked groups, thereby ensuring a more inclusive and equitable stakeholder engagement.

The inclusion of municipalities as stakeholders may shape communities' experiences and interpretations of engagement as inclusive (or not). Presumably, municipalities are included because they should give voice to a generalized public interest in securing the benefits of development. However, if their priorities are primarily to ensure economic development benefits – whether for local towns or for larger regions – municipal representatives may not be as attentive to the needs and interests of specific minority or occupational groups who may not equitably share the benefits of development. When stakeholder engagement is done by treating municipalities as reflective of affected communities, other voices risk being neglected or crowded out, such as diverse interests from Sámi, youth, women, or fisheries stakeholders in discussions about the social-ecological costs or negative impacts of energy development. These are often more vulnerable stakeholders who are also those most affected by the projects (see, for example, Larsen and Buhmann (2024), this book).

In our data, municipalities are most often invoked in discussions of localized community impacts and benefits, as well as distributional justice concerns with potential impacts of oil and gas development for local fisheries. However, other stakeholders who represent different communities may place less emphasis on municipal social and economic benefits of development, and more emphasis on the negative impacts of energy development on fisheries or non-human nature. While municipal actors may be able to contribute a generalized view of affected community interests within a process of stakeholder involvement, an over-reliance on municipalities as the main authoritative representatives of affected communities may narrow the scope of discussion, exclude a diverse range of viewpoints, or lead to perceptions that stakeholder engagement has not been sufficiently inclusive because it has over-prioritized the interests of local decision-makers.

As stakeholder engagement becomes a critical aspect of corporate responsibility, project proponents increasingly recognize the need (or legal requirements) to incorporate diverse interests into their decision-making processes. In this context, cultural forms of community have been used to assert stakeholder status for recognition and inclusion. This often takes the form of environmental or other social movements that seek to intervene and speak on behalf of ecological communities, future generations, or other notions of community that expand beyond local place-based human communities. Figure 3.2 is a two-mode network diagram that maps the connections between included stakeholders (grey nodes) and thematic coding

for distributional and procedural justice issues (black squares) through various forums for stakeholder engagement around oil and gas development.

As we see in this figure, place-based municipalities and community actors often intervene in stakeholder engagement processes through claims around distributional justice (primarily framed around community impacts and benefits), fisheries interests, or – less often – asserting the touristic or recreational value of places that may be impacted by oil and gas development. These themes would seem to reflect a range of interests embedded within the local place-based communities that are most directly impacted by oil and gas development.

By contrast with municipalities, environmental and other NGOs bring a distinct set of vested interests to stakeholder engagement. These organizations are often less embedded in local place-based communities. Instead, they may represent a membership that is national or international in scope. This is reflected in Figure 3.2, where we see references to stakeholder intervention from several international organizations (Earthwatch, Greenpeace, International Union for the Conservation of Nature, Transparency International, Wetlands International, World Resources, WWF), as well as national organizations (Birdlife Norge, Norwegian Nature Conservation Association).

As we see in this network diagram, environmental and other NGOs are more likely to intervene through claims about climate change or ecological values (the intrinsic value or rights of nature). This illustrates how NGO actors speak on behalf of culturally constructed communities of non-human nature, the global climate, or future generations. By focusing on climate change or ecological values, these organizations help extend the range of issues that are addressed through stakeholder engagement beyond the geographic boundaries of place-based communities. However, environmental and other NGOs devote less attention to the distributional justice issues (community impacts and benefits) or concerns with fisheries-based livelihoods that are more often taken up by municipal and county stakeholders as representatives of place-based communities.

We have discussed Indigenous groups and municipalities as examples of place-based communities, while we discussed environmental NGOs as drawing on a cultural conceptualization of community as an alternative ground for intervention in stakeholder engagement. The third form we wish to address is a relational (or social network) understanding of community. Labour unions and industrial associations provide good examples of this form of community, as they are organizations that formalize and give voice to social networks among members of common occupational groups. This is an example of what Crossley (2011) calls “corporate actors” in social network analysis – organizations that represent the collective interests and voice of a group of participants in a social network. Figure 3.3 provides another two-mode network diagram that focuses on how Norwegian labour and industrial association actors (grey nodes) intervene in stakeholder engagement around different themes and concerns (black nodes)

Recall that place-based community actors intervene primarily around distributional justice (community impacts and benefits) and fisheries, while environmental NGOs more often intervene on behalf of cultural communities around issues of climate change and ecological values. Here, we see that labour organizations and industrial associations – as relational communities – also intervene to influence local stakeholders in oil and gas development. They appear as representatives of fishers as an impacted community to voice concerns around distributional justice, particularly around potential risks and impacts of development on fisheries. Labour and industrial association actors also intervene around climate change. However, in comparison with NGO actors they are more likely to give visibility to issues affecting their

occupational communities, including just transition, energy justice, and community impacts of renewable energy transitions.

Through our exploration of cultural and relational forms of community in Norway, we see diverse conceptualizations of stakeholders. Cultural communities, represented by NGOs, bring forward broader ecological and future-oriented concerns, while relational communities like labor unions focus on immediate social and economic impacts. This diversification challenges us to think beyond solely place-based conceptions of community and recognize a broader spectrum of actors who seek recognition to be represented in a stakeholder engagement process.

In examining the Norwegian case, we see a complex landscape of stakeholder engagement where diverse forms of community, from municipalities to labor unions, engage with corporate actors like Equinor and Shell. This complexity illustrates our argument that inclusive stakeholder engagement requires recognizing and engaging with a wide array of community forms, each bringing unique perspectives and concerns.

### ***Conclusion***

As theories and practices of stakeholder engagement evolve, scholars and practitioners are asking what kinds of processes make the experience of engagement meaningful for communities that are impacted by development. However, the concept of community itself is often underdeveloped and abstract within stakeholder engagement discussions, assuming that there is a shared understanding of who makes up the community in terms of stakeholder engagement processes. Foundational work in stakeholder theory includes assertions that the interests of the most directly affected communities should be given priority and these communities should have the right to participate in decisions shaping their well-being (Evan & Freeman, 1993; Freeman, 1984). As illustrated in the Introduction for this volume, there are also arguments that there needs to be a shift from top-down processes driven by governments and project proponents, towards models of engagement that are driven by – and more responsive to – local host community needs and interests in order to create more meaningful forms of stakeholder engagement (Buhmann et al., 2024, Introduction to this volume). In this chapter, we take a theoretical step back from these general assertions and focus on the diverse ways of conceptualizing who constitutes “community” for the purposes of stakeholder engagement that is inclusive of those affected, based on the view that inclusive engagement is a key part of meaningful engagement.

By understanding the diverse ways in which communities are formed and identified – whether place-based, cultural, or relational – we gain insights into who is already implicitly being treated as affected stakeholders in various contexts, as well as who is excluded from engagement processes that should be included. This approach not only ensures a comprehensive identification of all potential stakeholders but also respects the complex, multi-dimensional nature of communities in today’s interconnected world. Recognizing the full spectrum of communities affected by a project will help with creating engagement strategies that are more inclusive.

As we conclude our discussion, we emphasize the importance of developing a reflexive understanding of communities, particularly as the subjects of stakeholder engagement. Our exploration of the concept of community pushes us to think of the complexity and diversity inherent in within and across different forms of communities. This overview highlights that there are other ways of conceptualizing community in addition to the place-based



understandings of community that are often assumed in stakeholder theory and engagement processes (also see Clark, 1973; Delanty, 2009; Walsh & High, 1999).

At the same time, we want to be clear that other ways of conceptualizing community should not overshadow place-based understandings of community. Communities that are physically co-present with development projects will always have a particularly strong interest in the social, economic, and environmental impacts and trade-offs inherent to development projects. While cultural or relational communities may diversify the range of voices and views brought to engagement processes, these should not displace the interests of the place-based communities that must live with the near-term and long-term benefits and costs of development.

To engage with communities as stakeholders, we need to question and understand who constitutes the “we” in these processes. Grappling with this question is necessary to address issues of justice in community engagement, including the procedural, distributional, and recognition dimensions of justice (Fraser, 2000). Procedural justice refers to the fairness of the processes through which decisions are made, including the mechanisms for community participation and representation. Distributional justice pertains to the fairness of the outcomes, examining whether benefits and burdens are equitably distributed across the community. Recognition justice involves acknowledging the diverse identities, experiences, and needs within the community, ensuring that all members are respected and valued (Thibaut et al., 1973; Walker & Baxter, 2017).

As we see from our research examples, actors that represent distinct types of communities – place-based, cultural, and relational – may give voice to several types of claims for procedural, distributional, or recognition justice. While place-based community actors may be most concerned with distributional justice in terms of local community impacts and benefits of development, cultural communities may be just as concerned with gaining greater recognition for impacts of development on non-human nature, the global climate, or future generations. By contrast, relational communities – such as labour unions and industrial associations that define occupational groups or economic sectors as affected communities – may seek distributional benefits of development or attempt to mitigate negative impacts of development on their occupational networks. However, they may also raise unique concerns from their occupational communities that are not voiced by other types of community actors.

The illustrative examples we used from Atlantic Canada and Norway indicate that a broader approach to who constitutes the communities that need to be engaged as stakeholders will likely result in a more diverse range of distributional, procedural, and recognition claims being brought to the table for consideration. For practitioners of stakeholder engagement processes, this raises the tangly issues of building constructive dialogue and moderating among the vested interests inherent to these different forms of community in ways that are transparent and equitable. A nuanced understanding of the different forms that community takes can help ensure more inclusive processes as a step towards meaningful stakeholder engagement.

## Notes

- 1 Independent Expert Advisory Committee MUSKRAT FALLS PROJECT website: <https://ieaclabrador.ca/>.
- 2 Community population estimates are for 2023, and are taken from Statistics Norway, “Population and Land Area in Urban Settlements.” <https://www.ssb.no/en/befolkning/folketall/statistikk/tettsteders-befolkning-og-areal> (accessed January 17, 2024).

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## 4

# SÁMI COMMUNITY LIFE IN AN AGE OF MODERNIZATION AND WELFARE DEVELOPMENT?

## Reflections on Participation in Industry Development and Employment in a Mixed Norwegian-Sámi Coastal Community

*Sven-Roald Gállok Nystø*

### **Introduction<sup>1</sup>**

Contemplating on Meaningful Stakeholder Engagement (MSE) as an important basis for analyses of modernization, welfare development, and even green transition perspectives in Sámi communities for future development, are challenging. Particularly when applying this approach to your own community, in a historic, contemporary, and future perspective. The community is Ájluokta-Drag, a village in Hábmæra suohkan/Hamarøy municipality, Nordland County in Norway. Prior to 2020, the village was a part of Divtasvuona suohkan/Tysfjord municipality, which ceased to exist as a municipality due to a national municipality reform.

Ájluokta-Drag is a place, but also a mixed Norwegian-Sámi community, which encompasses both a geographical space, a temporal depth in terms of history and a social construction in the form of inhabitants who relate to each other and others, in various ways (Førde et al., 2015). Already the names of the place – Ájluokta in Sámi and Drag in Norwegian – suggest diversity. It is based on historical assumptions where Divtasvuodna/Tysfjord has had a changing role over a very long time, which includes settlement, ethnicity, and Great Power interests in the area with roots in the beginning of the 17th century, when the kingdoms of Denmark-Norway and Sweden fought over the Sámi territories in the north. (Nielsen, 2017).

### **The Sámi Community**

The Sámi community of Ájluokta-Drag, with its around 800 inhabitants, is among the country's largest traditional Sámi communities outside of Finnmark County, which is Norway's

northernmost county. In a local study from 2021 on Drag, financed by Nordland County Government, it is stated that (Investigation Group 2021, pp. 13–14):

Drag is the center of the Lule Sámi population and here the Sámi language is spoken among part of the population as a daily language in the community. The Sámi have a special relationship to places, which have been developed through generations of family and life stories, via expressions of hope, longing, work, and love, so you belong to the place in a rather different way than the majority population. And not only does one belong to the place, as to the people and houses that stand there, but just as much to nature, the landscape, the fjord, the farm, and the mountains. This is how one understands that some Sámi say that they live on Drag, while they “summer-reside” in the roadless and mostly displaced fjords. This perspective has been strongly expressed with subsequent resistance when outsiders have sought to implement measures that were perceived locally as threatening this type of adaptation and local Sámi identity.

A government proposal in 1991 to establish a national park in the Lule Sámi fjord areas was perceived to be a violation of local Sami traditions and rights of use, a violation of the right to self-determination and democracy, as well as a future obstacle to local development and business (Andreassen, 2002, pp. 115–127).

The main part of the Sámi population in today’s Hábmera suohkan/Hamarøy municipality, resides in Ájluokta-Drag. The place is also the result of an immigration processes that accelerated from the in-fjords of Tysfjord in the 1960s and beyond. For many Sámi families, the move took place in two stages. The first to displaced small farms and homesteads which were within an acceptable distance to go by a daily round boat trip to the municipal center Gásluokta/Kjøpsvik for work, where the cement factory was located as well. The economic adaptation it entailed, was that parts of the traditional subsistence household were maintained and gradually gained access to wage income from industry or other recurring wage work.

The money earned was used for investments in family households, to build summer homes in the places from which they originated, and to contribute to maintaining religious activities in the local first-born Laestadian congregation, to which they were affiliated in various ways. Most of the activities in the parish took place in the Sámi language and the affiliation, had become an important part of the local Sámi identity of the time (Andersen, 2007). These people continued being members of their traditional Sámi communities and took part in the activities that a “Sámi year” entailed (Urheim, 2017, p. 28). This is a year that starts with the spring and lasts through eight seasons to the next spring, when it starts all over again.

The second move for these people took place either to Kjøpsvik or Drag. In many cases, their children traveled out of Divtasvuodna/Tysfjord and Hábmer/Hamarøy to more urban areas for education and work. It also happened together with peers from Sámi families who had previously lived in the Drag area or further out in the Tysfjord. Another reason for emigration from the fjords was a government housing campaign for Sámi, which from 1971 also included Tysfjord. The move took place to Drag, and contributed to the housing shortage, unemployment, and social problems in the village. The ethnic relations between the Sámi and Norwegians were strongly separated at that time with very few common arenas (see further, Evjen, 1998, 2001). The concentration of Sámi in Drag contributed to the increased stigmatization of the Sámi among the Norwegians (Norwegian Truth and Reconciliation Commission, 2023, pp. 485–486).

Most of the communication took place at sea with boats, which were expensive both in terms of investment and operation. Fishing was also a local traditional Sámi industry with roots in the area with a lot of traditional knowledge associated with it, and use of the Sámi language. The Tysfjord Sámi also participated in the Lofoten fishery and partly in the Finnmark fishery.

In a scientific presentation of Lule Sámi women's social participation in Tysfjord, from the time around the First World War and "up to our days", Lule Sámi women's position and participation in political and organizational communities is examined, with an emphasis on the years after 1980.

The findings show that Lule Sámi women in Tysfjord seem to have been outside secondary communities both historically and up to the present day. Until the 1970s, they had few social arenas other than the home sphere, relatives, and participation in the Laestadian congregation.

(Aira, 2023, p. 13 (author's translation))

Such historical conditions still characterize the situation of the Sámi community today. In addition to municipal reforms, the labor market had changed a lot since a combination of small farms, fisheries, subsistence activities, and casual wage work carried a family or a larger household financially.

### **Nowadays**

Nowadays jobs in Drag are found in public municipal service-management in terms of health care, teaching at schools, private and public kindergartens, Sámi language work and museums. The local business community offers work for craftsmen, drivers, plumbers, carpenters, and others are pensioners whose time and experience are also in demand.

In 2020, the Norwegian Mineral Industry (Norsk Bergindustri) adopted the Canadian Towards Sustainable Mining (TSM) program, and made it mandatory for all companies that are members of the Norwegian Mineral Industry. TSM is a globally recognized sustainability program which is measuring, verifying, and reporting performance at the site level (see Norsk Bergindustri, n.d.).

The Quarz Corp (TQC) mineral processing factory at Ájluokta-Drag is one of those companies. The work on how TSM was to be carried out locally at Drag was initiated in June 2023, in the form of the establishment of the Ájluokta-Drag Community of Interest Accommodating Forum. The purpose was to get the interaction between TQC and the local community of Drag into more fixed and organized forms, which concur with meaningful stakeholder engagement (MSE). TQC is located close to Árran Julevsáme guovdásj Lule Sámi Centre. It is an important factory for the local Sámi as well, in terms of jobs in Habmera suohkan/Hamarøy municipality.

Salmon farming in the fjords of the municipality (mainly the Tysfjord) is also a substantial provider of jobs for the Sámi. In the fall of 2002 the Lule Sámi community of Mässke/Musken, located in Oarjjevuodna/Hellmofjorden, was granted two salmon fish-farming licenses free of charge by the Directorate of Fisheries. The aim of the initiative was to contribute to the strengthening of the basis for the continued settlement of the village to maintain and develop the vulnerable Lule Sámi culture and language. An evaluation of the grant

process, the establishment of the fish-farming activities, and the impact and consequences for the community has been assessed by Sandersen (2005). One part of the conclusions reads:

The measure also created big – and largely unrealistic – expectations among the locals that caused frustrations when the fish-farming activities failed to meet their expectations. The application process partly contributed to this as the applicants overbid each other by indicating spill-over effects and non-fish-farming related infrastructure establishments, such as the running of the grocery store, kindergarten, road building, etc. The competition between the major applicants also contributed to division and discord between the corresponding local groupings.

(Sandersen 2005, p. 7)

Between October 2013 and March 2017, the Árran Lule Sámi Centre conducted a project entitled “Indigenous Peoples and Resource Extraction in the Arctic: Evaluating Ethical Guidelines”, funded by the Norwegian Ministry of Foreign Affairs. The project focused on the intersection between Indigenous rights and extractive industrial activities.

The project’s results provided basic documentation in the form of analyses of international ethical standards and instruments with recommendations for both authorities, industry, and Indigenous peoples with the aim of facilitating more ethical resource extraction, so that the rights and interests of Indigenous peoples could be safeguarded in a more adequate way (see Arran.no, n.d.). The relationship between authorities, companies, and Indigenous peoples formed the core of the recommendations. Issues that are complex and intertwined, which hardly can be solved separately and piecemeal, but should rather be dealt with in a more holistic and integrated perspective.

One of the fieldwork-based case studies conducted took ethical guidelines into the field for evaluation by Indigenous stakeholders. Three studies were conducted in Russia, the fourth in Divtasvuodna/Tysfjord (Stammler et al., 2017, pp. 14–17). One passage regarding local industry activities reads:

Cement production in Kjølsvik has a history of nearly one hundred years. The mining activities in Drag have a decades-long history as well, with participation of Sami workers in both sites. This is an important example of how indigenous people can become successfully incorporated into a mining activity, to such an extent that mining becomes a mainstay in the indigenous economy.

(Stammler et al., 2017, p. 16)

The aquaculture company Cermaq is one of three salmon farming companies operating in Hamarøy municipality. Cermaq is now a part of the Mitsubishi Corporation, which supports the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Indigenous and Tribal Convention (ILO Convention No. 169). Cermaq, which operates in Canada, Chile, and Norway, reports annually on social community indicators, which include Indigenous peoples.

In this regard, it is promising that the Aquaculture Stewardship Council (ASC) is developing a global ASC Farm Standard which acknowledges human rights impacts as an integral part. In this context, it is further promising that a key principle of human rights law, namely the inclusion of Free, Prior and Informed Consent (FPIC), in the ASC Farm Standard is under consideration, in terms of an assessment project (ASC, n.d.).

### **Renewed Opportunities**

In the latter part of the 1990s, the Nordic countries developed a welfare state embodying a range of schemes that followed the citizens from cradle to grave. As residents of the respective Nordic countries they live in, the Sámi in Norway, Sweden, and Finland became part of this progress. This has led to a profound modernization process in Sámi societies, changing the lives of both Sámi and non-Sámi (Andresen et al., 2021, p. 452).

The economic crisis that hit Norway at the start of the 1990s was replaced by a period of almost continuous economic growth. This enabled growth in the public sector, but also growth in prosperity, increased living standards, and a business community with high productivity, solid competence, and great adaptability. Comparing economic conditions in Sámi social life with those in the majority society, research has given reason to believe that the Sámi in Norway have taken part in the country's general growth in prosperity, even if the overall income level probably is not as high as in the non-Sámi population (Andresen et al., 2021).

### **Truth and Reconciliation**

At present in Norway it is a fundamental principle that the ordinary provision of public services must take account of Sámi and Sámi-speaking users, and that established rights must be safeguarded within the welfare state's general arrangements. In reality, however, this principle has not always been followed (Andresen et al. 2021, p. 453). On the contrary: on 1 June 2023, the Norwegian Truth and Reconciliation Commission in Norway provided extensive documentation on the matter to the Norwegian Parliament ((Norwegian Truth and Reconciliation Commission, 2023, especially Chapter 17). The living conditions of the Sámi in Divtasvuodna/Tysfjord were also dealt with by the Commission, both from a historical and contemporary perspective. The review ends as follows:

The stories from Tysfjord deal with injustice and failure. At the same time, they bear witness to courage and mastery, many have retained their language and traditions and have been clear dissenting voices during the Norwegianization, and in recent decades many have stood up for themselves and dared to confront and settle injustice.

(Norwegian Truth and Reconciliation Commission, 2023 (author's translation)).

### **Closing Remarks**

With reference to the preceding texts, it is reasonable to conclude that the Sámi community in Áljuokta-Drage comprises people of all ages from various areas with different experiences, expertise, and views of the future. Many Sámi today have cross-national border belonging inherent in their Sámi identities. Debates related to an evolving Sámi nation-building process occur in the community and relate to global cultural expressions and communities as well (Dankertsen, 2014, p. 7).

When elaborating on co-existence of mining operations, salmon farming, green transition, and Sámi rights and interests, and the conditions that can enable this, it's imperative that there exists, at least, a common knowledge base for assessment. Regrettably, we are far from that in Norway today.

The Quartz Corp (TQC) is expanding its operations in Áljuokta-Drage. The implementation of TSM will be a driver regarding the needs of skilled and well-qualified workforce of



Sámi as well. The Sámi are not properly organized to meet all the challenges attached to the green transition (for examples of green transition-related impacts on Sámi communities, see the chapter by Mestad (2024) and the practice note by Gråik (2024)). A situation among Sámi rights-holders corresponding to the discord and division created by the two fish-farming licenses created in Måsske/Musken, must be avoided. Meaningful stakeholder engagement based on relationships is needed.

TQC's increased activities at Ájluokta-Drag challenge the local community in several ways. Drag TSM forum needs a vision for its interaction with TQC based on the variations the village represents, a vision that embraces as many people as possible. My suggestion is as follows:

Ájluovta TSM guovddo/Drag TSM ILU/Ájluokta-Drag TSM Forum as a facilitating forum for interaction with The Quartz Corp, works in the industrial environment based on the time span between the lives of previous generations, and our contemporary presence, community spirit and activities in Ájluokta-Drag, seen in a sustainable future-oriented society-building development perspective.

### Note

- 1 An earlier version of this note was presented at the workshop 'Meaningful engagement of communities affected by green energy development in Northern Norway and the Arctic more generally', February 2, 2024, at UiT – Norway's Arctic University, with funding from the Nordic Council of Ministers' Arctic Co-operation Programme for the project *Towards a socially just transition in the Arctic: Exploring, theorizing and disseminating best practice in meaningful stakeholder engagement for communities* (project number A21751).

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# 5

## REPRESENTING RIGHTS OF NATURE THROUGH MEANINGFUL ENGAGEMENT?

### An Epistemic Justice Perspective

*Jingjing Wu*

#### **Introduction**

The vantage point of this chapter is that for stakeholder engagement to be meaningful, it must be just. Just stakeholder engagement is the prerequisite for a meaningful stakeholder engagement (MSE). As noted in the Introduction chapter to this volume, the concept of MSE is comprised of three terms – meaningful, stakeholder, and engagement –, each of which take on a particular nuance in the context of the other two (Buhmann et al., 2024). According to the Office of the High Commissioner for Human Rights (OHCHR, 2012), the *affected stakeholder* refers to an individual ‘whose human rights has been affected by an enterprise’s operations, products or services’, and ‘stakeholder engagement’ refers to ‘an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders’ (OHCHR, 2014). The primary objective of such a process is to ‘identify and prevent harmful impacts, and mitigate and remedy those, if prevention is not possible’ (UNGP, guiding principles 15 and 17). Therefore, the engagement process can only be meaningful if it equips those actually or potentially affected with the relevant knowledge as well as support *for interpreting it and placing it into their own context* (Buhmann et al., 2024). The focus on the affected stakeholders, potential harm, and remedy, as well as a contextual approach, all hinge on the concept of justice in both moral and ethical terms. Therefore, a prerequisite for engaging with stakeholders in a meaningful way is to do it in a just way. Thus, a perspective from the justice theory contributes to an essential understanding of what MSE entails.

One of the most affected, yet most neglected, stakeholders in our time is nature. Although not a human, a growing literature and legal practices have shown the importance of considering nature as a stakeholder (Kortetmäki et al., 2023; Laine, 2020). The concept of Rights of Nature (RoN), for example, views nature as not only a stakeholder but also a rights holder in an anthropocentric legal system. This concept of treating nature as a rights holder and, therefore, a (potentially) affected stakeholder, is migrating into mainstream legal practices around the world. From the Constitution of Ecuador (2008) to Māori treaties with the Crown, to the grass-roots international Rights of Nature tribunal, RoN has become a global movement against a backdrop of climate change and social injustice.<sup>1</sup> This global movement, however,

has also a fair amount of resistance. One of the main concerns is that unlike humans, nature cannot speak for itself, so how are humans to decide and represent nature's interests and rights in an anthropocentric legal and political system? Or, to phrase this in the MSE context: How can we possibly meaningfully engage nature as a stakeholder?

Against this backdrop, this chapter focuses on the scenarios when Indigenous communities function as the voice of nature.<sup>2</sup> In such scenarios, we have a dual-stakeholder situation, where Indigenous communities both represent their own interests and act as an intermedium for society to engage with nature. It should be noted that this chapter does not assume that all Indigenous communities undertake the roles of protectors/spokespersons of nature, because the relationships between Indigenous communities and nature are far from straightforward.<sup>3</sup> Rather, it chooses to focus on the cases where Indigenous communities undertake the role as the voice of nature and discusses the particular obstacles they encounter when assuming such functions. Nevertheless, the important roles of Indigenous communities in protecting nature and representing nature's interests – including pushing forward with the RoN movement – should not be overlooked<sup>4</sup> (e.g. Andersson et al., 2021; Etchart, 2017; O'Donnell et al., 2020; Wu, 2020).

As the chapter will explain, one of the main obstacles that these Indigenous communities encounter when representing nature is the unfair treatment of their epistemology – which, ironically, is one of the main reasons why these communities are more capable of representing nature than Western epistemology-dominated societies in those contexts. Hence, this chapter turns to the epistemological (in)justice theory as the theoretical lens to understand this process.<sup>5</sup> The main argument is that the epistemic injustice encountered by the Indigenous communities largely compromises their capacity to represent nature's interests.

The rest of the chapter will introduce three types of epistemic injustice, based on the work of Miranda Fricker (2007) and Kristie Dotson (2014). Each type will follow with a case to show how this particular type of epistemic injustice prevents the relevant Indigenous community from representing and protecting nature. This chapter concludes by shedding light on the possible ways to overcome such epistemic injustice in those situations from a virtuous perspective. The overarching point of the chapter is to show how we can use epistemic injustice as a lens to check whether stakeholder engagement is done in an epistemically just and thus meaningful way, especially in the context of engaging with Indigenous communities when they represent nature as a dual stakeholder.

### **Testimonial Injustice Faced by the Mbyá-Guarani Tribe during a Public Meeting**

This part first introduces the concept of *testimonial injustice*, followed by an example to elaborate how this type of epistemic injustice is found in the interaction between one Indigenous community and the local society in Brazil.

#### ***Testimonial Injustice***

According to Miranda Fricker (2007) in her seminal work *Epistemic Injustice: Power and the Ethics of Knowing*, testimonial injustice occurs when a hearer associates a speaker with lower credibility than is due to her, as a result of a societal or systemic prejudice against the speaker. This means the speaker is not given the credit she deserves on the account of her knowledge. Such credit deficiency further prevents the speaker from sharing her knowledge with others in the society and from contributing to the accumulation of the societal knowledge. This harms the

speaker in her capacity as an epistemic agent (a knower), by ‘unduly excluding her from the communal epistemic practices of sharing and pooling knowledge’ (Townsend and Townsend, 2021, p. 150). The harm that is done to the speaker follows from ‘a persistent compromise of one’s epistemic agency’ (Dotson, 2014, p. 123). To recognise such harm requires that one acknowledges that ‘our theories of knowledge and knowledge practices are far from democratic, maintaining criteria of credibility that favor members of privileged groups’ (Tuana, 2006, p. 13).

The most common examples of testimonial injustice can be found in daily social practice. For instance, we usually associate a speaker with a certain degree of credibility given her specific accent. If the credibility we associate with the speaker is merely due to her accent and is less than she deserves otherwise, we are committing testimonial injustice against her. Another common example found in most Western societies is that we usually associate a speaker (usually a female gender) who is deemed emotional when making a public speech with less credibility than a person who appears to be rational. However, being emotional is an irrelevant factor when it comes to one’s capacity to acquire knowledge. Therefore, to consider a speaker (especially a female) who is emotional in her style of speaking as less credible due to a social prejudice is an unjust practice against the speaker.

### **Mbyá-Guarani Tribe’s Public Meeting Regarding Their Relocation**

The first case occurs in Brazil, where the Indigenous tribe *Mbyá-Guarani* have struggled in their original land (Paraty) due to local tourism and deforestation. In 2008, some of the families moved 160km away to Niterói and decided to settle on the beach of Camboinhas. Some scholars have documented this move and the ensuing conflicts between *Mbyá-Guarani* and the local communities of Niterói (e.g. Fragoso, 2022). The leader of the *Mbyá-Guarani*, Darcy Tupã, stated that their migration had two main reasons: ‘the limitation of their previous land and a wish to preserve the beach of Camboinhas, *where projects threatened to destroy the archaeological site of shell mound used for human burial by their ancestors*’ (Fragoso, p. 370. Italic added). However, their move was not welcomed by the local communities. The conflicts between the *Mbyá-Guarani* and the local neighbouring communities lead to a lawsuit against the *Mbyá-Guarani*, claiming they were ‘devaluing the neighbourhood...’<sup>6</sup> Both parties were called to defend their positions in a public meeting, at which Darcy Tupã gave a speech ‘based on cultural patrimony and heritage, including evidence of the ancestral human remains and sacred objects in Camboinhas’ (Fragoso, p. 370). He stated:

There is an Indigenous cemetery in Camboinhas, they are our ancestors, but at this moment there are tractors running over their bones... it is essential for us to stay physically close to our ancestors’ remains for the protection of the past and future, and to perform ‘xnodaro’, which is a practice based on chants and rituals to divert evil spirits and preserve nature and our survival.

(cited in Fragoso, p. 370)

However, it is reported that Darcy Tupã’s testimony was judged as less credible than the other leaders, ‘because of his ethnicity and his use of stories from his community’ (Fragoso, p. 371). It was also observed that Darcy Tupã ‘had less space to talk than others. He was cut off several times by the judge, considered to be less capable of speaking and received less attention from the audience’ (Fragoso, p. 371). The follow-up Court decision went against *Mbyá-Guarani*.

It is seen from this incident that Darcy Tupã was considered less credible at the public meeting because of his ethnicity, which led him to have a different way of sharing knowledge, i.e., telling ancestral stories. This social practice reflects testimonial injustice, in which the speaker (in this case, Darcy Tupã) receives less credibility than he is due because of prejudice against his ethnicity. Because this practice specifically harms Darcy Tupã's credibility of his capacity as a knower, which further prevents him from contributing his knowledge to protecting his tribe's ancestral link with the land, it is considered an epistemic injustice towards Darcy Tupã and his tribe.

This conduct of injustice not only contributes to the *Mbyá-Guarani* tribe losing the lawsuit, which 'damaged the tribe's capacity to bargain with local authorities and to articulate their connection to the land' (Fragoso, p. 371), but further obstructs the participation of the Indigenous knowledge of the *Mbyá-Guarani* tribe as part of the shared knowledge of the society. They are, in this sense, systematically disadvantaged. Their special relationship with the land is deemed unconvincing; and their traditional practice is considered not worth preserving. Therefore, although a public meeting where all relevant stakeholders are invited to speak and communicate with each other may seem like a fair practice that complies with the stakeholder engagement checklist, by discrediting Darcy Tupã mainly due to his ethnicity and style of speaking, this public meeting process still treated Darcy Tupã and the *Mbyá-Guarani* unjustly. Moreover, since one of the main reasons for the relocation of the *Mbyá-Guarani* is to preserve the beach of Camboinhas, by denying this motion, the local community also prevented the *Mbyá-Guarani* from preserving the beach. Therefore, because of the testimonial injustice the *Mbyá-Guarani* suffered from the public meeting, their capacity to protect nature is also compromised.

### **Hermeneutical Injustice and the Djab Wurrung People's Fight for Preservation Birthing Trees**

This part first introduces the concept of *hermeneutical injustice*, followed by further elaboration, exemplified by the Djab Wurrung people's fight for the Birthing trees in the State of Victoria, Australia.

#### ***Hermeneutical Injustice***

Hermeneutical injustice occurs when some significant area of one's experience is obscured from collective understanding, due to a 'gap' within the interdependent epistemic resources themselves (Dotson, 2014; Fricker, 2007; Townsend and Townsend, 2021). In cases of structural hermeneutical injustice, this lacuna arises precisely because members of these groups are denied full participation in the 'practices by which social meanings are generated' (Fricker, p. 152). In Dotson's words,

(b)eing unable to communicate large portions of one's experiences due to the deficient nature of dominant, shared epistemic resources...profoundly impacts one's ability to contribute to knowledge production...insofar as utilizing insufficient epistemic resources disable one's ability to fully render one's experience intelligible to all relevant interlocutors.

(p. 127)

What was not entirely clear in Fricker's original notion of hermeneutical injustice (and later on clarified by commentators) is the difference between *cognitive hermeneutical injustice* and *communicative hermeneutical injustice* (Townsend and Townsend, 2021). In the former case, the speaker's experience is rendered unintelligible because there is no hermeneutical resource in the society to make sense of it. In the latter case, hermeneutical injustice occurs *despite* the speaker having the knowledge to make sense of her experience: she fails to communicate such experience to the hearer because of the lack of 'shared' hermeneutical resources. In either situation, the speaker's ability to make sense of her experience and to share it with the wider society is harmed due to the deficiency of the hermeneutical resources in that society. To consider it as an injustice is because such deficiency is far from random. What the society decides to devote its resources to and develop which aspect of its epistemology is decided by those in power.

### ***Djab Wurrung People's Fight for the Birthing Trees***

When it comes to hermeneutical injustice, I posit that a large proportion of the examples in the MSE context falls under the category of communicative hermeneutical injustice. The lack of shared hermeneutical resources means that socially disadvantaged groups encounter difficulties in communicating their experience to the audiences (or 'hearers' as in epistemic injustice theories) in the way that is supposed to be heard.

The case that represents this type of epistemic injustice occurred in the State of Victoria, Australia. The state government decided to bulldoze an area containing more than 260 eucalyptus trees that belong to an area sacred to the Djab Wurrung Nation. Some of these trees are up to 800 years old, including trees known as the Birthing (or Grandmother) Trees (Austin, 2020). Generations of Djab Wurrung babies were born in the hollows at the bases of those trees (Malins et al., 2020). They are also the places '[the child] could come for spiritual guidance.' (Groch, 2020) 'In some cases, a Grandfather Tree accompanies a Birthing Tree—“like an old man guarding it”—with their roots intertwining and communicating underground' (Thorpe cited in Groch, 2020; Webster, 2023). The Victorian government decided to cut down those trees to make way for its Western Highway project. This led to the long-standing protests led by the Djab Wurrung people, including on-site camping. The government insisted that it had sought and gained permission from traditional owners in accordance with applicable legislation. However, the government only consulted with the Eastern Marr Aboriginal Corporation, which is the Registered Aboriginal Party in the region. This excluded the Djab Wurrung Heritage Protection Embassy from the entire formal consultation process. Therefore, the Djab Wurrung people maintain that they do not consent to the destruction of the trees (Porter, 2020). Although the government did decide to preserve some (but not all) birthing trees, according to Elder Marjorie Thorpe, '[w]hat they (the government) want to do in this plan is actually put the road around the trees so it'll be like they'll be in a museum' (cited in Porter, 2020). This Western static view of heritage where objects can be simply put in boxes clearly clashes with the spirit of living culture of the aboriginal peoples (Porter, 2020). Djab Wurrung author Nayaku Gorrie commented 'The inability to see these sites as worthy of being protected or that they are significant is fundamentally racist. It is white selectivity that deems sacred trees unworthy of protection' (Gorrie, 2019).

To further home in the point that such inability to see the Djab Wurrung people's way of living as worth protecting is a perpetration of hermeneutical injustice (Lawrence, 2019), it is

worth noting that the Victorian government used the notion of ‘safety’ as a main argument to legitimize the project. As Gorrie (2019) pointed out: ‘The official line given by the Major Roads Project Authority is safety. This framing can be understood as a way to undermine land defenders and position us as against the interests of the rest of the population.’ As Lawrence (2019) explained:

to treat the issue as though the claims of safety were in some way “equivalent” to, and therefore can be balanced against, sacred relation to the country is a form of epistemic injustice through equivocation... These concepts effectively erase the very different language of Aboriginal people in their attempts to convey their physical, cultural, and spiritual connection to the country.

Hermeneutical injustice occurs when ‘there is unequal hermeneutical participation with respect to some significant area(s) of social experience’ (Fricker, 2007, p. 153). In this case, the Birthing trees clearly play a significant part in the Djab Wurrung people’s lives, as these are the places where babies are born and people seek their spiritual guidance, two of the most important aspects of life. The inability to see and refusal to acknowledge this, even after the significance of those trees had been made clear, reflects a practice of social and epistemic coercion against the Djab Wurrung people, who in this case, are hermeneutically marginalized. The hermeneutical gap in this case is the significance of the sacred trees. The epistemic injustice is done to the Djab Wurrung people – not only because they are prevented from sharing their knowledge for reasons of prejudice or lack of credibility, but because they are unable to communicate the significance of these sacred trees due to the void in the hermeneutical resources in the settler’s states. They are also socially oppressed in this scenario because of hermeneutical marginalization (Fricker, 2007, pp. 155, 156).

The seeking of manufactured consent that is not from the real stakeholder (in this case the Djab Wurrung people); the idea of preserving those trees in between highways that cut off the connection between the trees and the Djab Wurrung people; and the use of ‘safety’ as a counterargument by the government to try to outweigh the sacredness of these trees: all these conducts are strategic manoeuvrings that try to marginalize the epistemic world of the Djab Wurrung people, while imposing the Western human–nature dichotomy upon them. The worldview of the Djab Wurrung people considers humans as part of nature, rather than outside (or even superior to) it. This worldview, which is fundamentally different from the conventional, contemporary Western one, makes them able to represent nature (in this case, more than 260 eucalyptus trees) and its concerns without being trapped in the anthropocentric way of thinking. This spiritual connection between the Djab Wurrung people and nature makes eco-centric relations between human and nature possible. In other words, because of the cosmovision of Djab Wurrung people, seeing the sacredness of the Birthing Trees, those hundreds of trees, together with their natural environment, can be preserved and protected against human destruction. However, the Victorian government marginalized the importance of the trees to the Djab Wurrung community by taking them out of their epistemic context and subjecting them to settlers’ epistemic system and Western logic. In this sense, not only were the Djab Wurrung people deprived of the chance to contribute to the shared knowledge of the society; their knowledge was actively oppressed through epistemically strategic arguments and conducts from the government. Consequently, their effort to represent and protect nature has been largely hampered.



### **Third-Order Epistemic Injustice and *The Kichwa Indigenous People of Sarayaku v Ecuador***

This part first introduces the concept of third-order epistemic injustice. It then uses the case *The Kichwa Indigenous People of Sarayaku v Ecuador* (2012) as an example to further illustrate my point.

#### ***Third-Order Epistemic Injustice***

Dotson (2014) has incorporated and developed Fricker's taxonomy on epistemic injustice into a three-order system. The first two orders of epistemic injustice<sup>7</sup> loosely equate with the testimonial and hermeneutical injustice. They are reducible forms of epistemic injustice in the sense that they can be reduced to social, political and historical powers (Dotson, 2014). The third order of epistemic injustice occurs, as Dotson states, when the speaker 'knows very well how to articulate her position and, yet, her account fails to gain the appropriate uptake given the ways *her testimony challenges shared epistemic resources*' (Dotson, p. 130, italics added). In this sense, the speaker faces 'the resilience of the inadequate shared epistemic resources' (Dotson, p. 130).

The difference between the hermeneutical injustice and third-order epistemic injustice is that hermeneutical injustice occurs when the shared epistemic resources are deficient and therefore fail to capture the speaker's significant experience. A third-order epistemic injustice, however, occurs when the dominant epistemic power refuses to acknowledge the limits or deficiency even upon being pointed out. A third-order epistemic injustice thus hinges on the epistemic resilience – the inclination for an epistemic system to preserve and uphold its fundamental assumptions and (actively or passively) oppress other epistemic systems. Therefore, third-order epistemic injustice is non-reducible. This means it cannot be reduced to social, political and historical epistemic powers (Dotson, p. 131) because it is eventually a clash of epistemic systems. 'It is the stuff "culture clashes" are made of' (Dotson, p. 132).

Third-order epistemic injustice is also the most difficult type to discover, because it is – to use a pop culture reference – a 'Matrix' dilemma. It begs the question that how people who live in the Matrix can even start to realize they are in a Matrix, not mentioning to question its legitimacy. As Dotson states, 'the problem scales farther than the epistemic resources themselves to the system upholding and preserving those resources' (Dotson, p. 131).

#### ***The Kichwa Indigenous People of Sarayaku v. Ecuador***

The landmark case of *The Kichwa Indigenous People of Sarayaku v. Ecuador* (2012) (hereinafter *Sarayaku v Ecuador*) handled by the Inter-American Court of Human Rights (hereinafter, the Court) concerned the State of Ecuador awarding a concession to an oil company to start oil exploration, including seismic surveys and using high-powered explosives on the traditional territory of the Kichwa Indigenous People of Sarayaku (hereinafter 'the Sarayaku People'). The Sarayaku People were neither consulted, and nor consented to, those activities (judgement, para. 2). After encountering resistance and protests from the Sarayaku People, the oil company tried to coerce them via illegal means, including bribery, fraud and intimidation (paras 186, 190, 191, 194). Members of the Sarayaku People organized six 'Peace and Life Camps', in which they marched to the borders of their territory and camped there to guard the border, where there was neither sufficient food nor shelter (para. 100). The Court

found in favour of the Sarayaku people on the account of, among others, the right to consultation, the right to property, and the right to life.

As the first in its history, the Court conducted an on-site visit to the Sarayaku territory and gave the representatives and authorities of Sarayaku People the floor to speak their truth and worldviews regarding their territory and their relationship with the land. For example, Sabino Gualinga, *Yachak* of Sarayaku, stated that ‘Sarayaku is a living land, a living forest; it contains medicinal trees and plants, and other types of beings’ (para. 150). He elaborated on the concept of *pacha* and explained that there were different *pacha*, some beneath the ground, *ucupacha*, and many more above the clouds. There are people living in beautiful towns beneath the ground in *ucupacha*. And he has reached many *pachas* above the clouds but couldn’t go beyond. All the shamans try to reach *jahuapacha*, where god is, but ‘we haven’t reached it’ (para. 150). He further explained that ‘the extermination of life is intolerable; the destruction of the jungle erases the soul; we stop being people of the jungle’ (para. 151). The Sarayaku President, José Gualinga, stated that the forest is a ‘living forest’; everything is interrelated (para. 152). Patricia Gualinga explained that *Kawsak Sacha* means “the living forest”. “They provide us with vital energy; they maintain balance and abundance; they maintain the entire cosmos and are interconnected” (para. 153).

The representatives of the Sarayaku People have shown to the Court what their fundamental worldviews are and how they navigate through their world. Their way of knowing is clearly different from the Enlightenment rationality, which is largely (if not solely) based on the materialized world and scientific epistemology (e.g. argumentative thinking (Kuhn, 1991) and experimentation). This clash of different epistemological worlds has been shown up in the ruling. For example, immediately following the above statements from the Sarayaku people, an expert witness ‘translated’ the views of the Sarayaku People into the terminologies and rationales that are compatible with the current social scientific framework. For instance, the Sarayaku People’s worldview that everything in the living forest is interrelated was ‘translated’ as ‘territory, knowledge, possibilities, the potential for production...also for human reproduction, are intimately related’ (para. 154). Furthermore, to explain what the living forest means to the Sarayaku People, the expert witness considered that ‘the cultural identity of each cultural group is dependent on the special relationship it has with nature, expressed in the most varied practices of management, protection, use or primary extraction of natural resources, goods or services from ecosystems’ (para. 154). Another expert witness tried to explain the ‘special relationship’ between the Sarayaku People and their land, stated that ‘for Sarayaku...they understand that the land is their greatest wealth, in the sense that it contains all the material elements required for satisfactory social reproduction, and where the beings that represent their spiritual beliefs are to be found’ (para. 154).

These expert testimonies show the epistemic resilience of the dominating Western social science. The Sarayaku People’s spirituality – that makes them protect their land with their lives – is reduced and ‘translated’ to a formality of cultural identity. Instead of acknowledging the Sarayaku People’s statement on its own merits, the Court based its ruling entirely on the ‘translation’ of the expert witnesses. The Court decided that the Sarayaku People ‘have a profound and special relationship with their ancestral territory, which is not limited to ensuring their subsistence, but rather encompasses their own worldview and cultural and spiritual identity’ (para. 155).

The failure to acknowledge the clash of epistemic worlds, in this case, overlooked the epistemic world of the Sarayaku People when the Court passed the judgement. In this sense, differing from the previous two examples, although the Sarayaku People won the case – and

we have reasons to believe that the Court had conducted the case in good faith – the Sarayaku People still encountered epistemic injustice during the process.

Most Indigenous communities have a special relationship with their land. Their care for the land (and nature in general) goes beyond the anthropocentric reasoning such as cultural identity, material relationship, rights to property or right to health (e.g. *Sawhoyamaya Indigenous Community v Paraguay* (2006); *The Saramaka People v Suriname* (2007)). This unique and distinct relationship that Indigenous peoples have with their land has been recognised by rulings from the Inter-American Court of Human Rights.<sup>8</sup> The umbilical relationship between the Indigenous peoples (in this case, the Sarayaku People) and nature hinges on the Indigenous spirituality (or cosmovision) of the community. Therefore, discarding the spiritual connotation of such a relationship not only devalues the epistemology of the Indigenous people, but puts the protection of nature under the ‘weigh and balance’ process of the courts. In other words, by equating the relationship between the Sarayaku People and nature as a category of cultural identity, the Court could balance it against other arguments such as the right to development. By doing so, nature, rather than having paramount value, as the Sarayaku People held and addressed in their testimony, becomes one of the many legal arguments that are at the Court’s disposal. Therefore, even though the Sarayaku People won the case, the importance of protecting nature is, all in all, weakened.

#### **A Possible Way Forward: How to Engage with Indigenous People and Nature as a Dual-Stakeholder in a Meaningful Way**

As pointed out at the beginning of the chapter, meaningful stakeholder engagement must be just engagement. Therefore, it is imperative to uphold epistemic justice when it comes to meaningfully engaging with Indigenous People, who are often also a voice for nature (hence a dual-stakeholder situation). So far, this chapter has shown that there are three ways in which Indigenous People could be discredited as a contributor of knowledge in their effort to protect nature, despite the fact that they are often in a better position than non-Indigenous communities to represent and protect nature. The last part of this chapter will revisit some of the solutions that Fricker (2007) and Dotson (2014) have proposed regarding the three types of epistemic injustice, which may shed light on the question of the chapter: how to engage with Indigenous People and nature as a dual-stakeholder in a meaningful way.

#### ***Virtuous Approach in the Context of Testimonial and Hermeneutical Injustice***

In Fricker (2007)’s thesis, the way to correct both testimonial and hermeneutical injustice is through a virtuous approach, which requires a certain reflexive awareness. This ensures the hearer is aware that the speaker’s capacity as a knowledge holder and contributor is compromised due to societal prejudice. In both cases, the guiding idea, as Fricker elaborated, is for the hearer to make a conscious effort to adjust the speaker’s degree of credibility upwards to compensate for the credibility deficit due to prejudice (in the case of testimonial injustice) or for the cognitive and expressive handicap experienced by the speaker due to the gap in the shared hermeneutical resources (in the case of hermeneutical injustice) (Fricker, pp. 92, 170). In both cases, the first and foremost step in correcting such injustice is the awareness from both parties, but especially from the hearer. A virtuous hearer must be ‘reflexively aware of how the relation between his social identity and that of the speaker is impacting on the intelligibility to him of what she is saying and how she is saying it’ (Fricker, p. 169). Such registration in the hearer’s

awareness of how the social and identity powers play into the epistemic injustice and to correct it voluntarily is the most important step in correcting the epistemic injustice done to the speaker.

In the context of MSE, this means that meaningful engagement with affected stakeholders must be done in a virtuous way. When engaging with stakeholders, not only does the hearer (such as a local government undertaking a statutory consultation), need to create a free, informed, and open space for the affected stakeholders, such as the Indigenous communities, to speak. More importantly, the hearer needs to practise the virtue so that he can hear – or, rather, *understand* – what the stakeholders are really saying. Put differently, there is a need to voluntarily and consciously adjust the credibility level of the affected stakeholders to compensate for any credibility deficit (in the context of testimonial injustice) or cognitive/expressive handicap (in the context of hermeneutical injustice) they experienced due to the imbalance of the epistemic powers in society. More concrete examples regarding how this could be done are elaborated below.

Let us return to the two cases of the relocation of *Mbyá-Guarani* tribe and the Djab Wurrung people's effort in protecting their Birthing trees. If the hearers in these two events had taken the virtuous approach, the Indigenous communities would have been heard very differently. In the case of the relocation of the *Mbyá-Guarani* tribe and especially regarding the testimony given by Darcy Tupã, a virtuous hearer would understand that the way Darcy Tupã speaks, such as telling stories to explain the tribe's ancestral links to the land, should not be deemed as less credible than other speakers; rather, it is the way of speaking and reasoning coming from a non-mainstream, non-Western culture. A virtuous hearer would realize it is unjust to give Darcy Tupã less credit or consider his testimony as untrustworthy or give him less space to speak just because of his ethnicity, which leads to his way of speaking. If the hearers were able to consciously realize this injustice as it was happening or even before it was about to happen, they would be able to catch themselves privately and publicly when the injustice occurred and then correct it, at least partially. For example, the public meeting organizer would have realized this injustice, called it out during the meeting, and asked the opponents and audience to show more respect towards Darcy Tupã. As for the case of the Djab Wurrung people<sup>9</sup>: Should the Victorian government practise the virtuous approach, they would realize that the use of 'safety' as a counter-argument in order to outweigh the Djab Wurrung people's requests for protecting sacred Birthing trees is to epistemically marginalize the Djab Wurrung people by strategically exploiting the hermeneutic void in society. Instead, a virtuous government, upon hearing the Djab Wurrung people's requests, would put more effort into planning and engineering an alternative route that bypasses the region altogether, rather than keep fighting the Djab Wurrung people for years and expecting them to succumb to epistemic, social and political pressure. In both cases, if the Indigenous communities were treated justly during the stakeholder engagement process, the nature in concern would be consequently better protected. This is because the original requests of those Indigenous communities were to protect nature in those contexts.

The virtuous approach, first and foremost, starts with the individual person. When each one of us finds ourselves as a hearer, especially in the context of MSE, we could make a voluntary effort to register the epistemic identity and power imbalance of our society and compensate the affected stakeholder with the credibility or capacity she deserves without the prejudice or hermeneutic gap. This practice could be considered as an ethical 'code of conduct' for MSE, especially when engaging with socially disadvantaged groups. Moreover, the virtuous approach could also be part of the code of conduct at an institutional level.

For example, how a court should treat testimonial evidence given by socially disadvantaged groups could be regulated in the way that reflects the epistemic injustice those groups may encounter during a court hearing. There could be, for instance, a procedural requirement for mandatory participation of a cultural expert when Indigenous people present their case in court. However, this is not a perfect solution, because there could still be a third-order injustice when resorting to the cultural expert, as seen in the case of *Sarayaku vs. Ecuador*. Nevertheless, a conscious practice of the virtuous approach at both the individual and institutional level is the starting point to address the testimonial and hermeneutical injustice suffered by the Indigenous peoples when they try to represent nature as a meaningful (dual) stakeholder. The last section turns to the most difficult task of addressing the third-order epistemic injustice.

### ***Tackling the Third-order Epistemic Injustice – A Virtuous Approach at a Social Level***

To understand why the third-order epistemic injustice may be fundamentally different from testimonial injustice and hermeneutical injustice, it is important to delve into the irreducibility of the third-order epistemic injustice. To say that the third-order epistemic injustice is irreducible means it cannot be reduced to mere social and epistemic powers. While social and epistemic powers certainly play important roles in contributing to the third-order epistemic injustice, they are not the only – even the most fundamental – reasons. As Dotson (2014) put it,

[M]eta-inquires have had to acknowledge the irreducible nature of some subject matter due largely to one's reliance upon those matters when interrogating them, that is, where what one seeks to interrogate is the condition for the possibility of the interrogation itself.

(p. 132)

She further explains,

[T]he very resilience of the system may thwart one's ability to make significant headway in becoming aware of the limitations of one's epistemological system by only revealing what the system is prone to reveal, therefore reinforcing the idea that one's system is adequate to the task, when one is actually stuck in a vicious loop.'

(p. 132)

In this sense, although 'epistemic power will absolutely exist as a problem for third-order changes. The major inertia, however, would be in prompting recognition of a third-order epistemic oppression at all' (p. 132). Because the most difficult part to address the third-order epistemic injustice is to recognise its existence in the first place. That is, the people who live in the Matrix should ask: are we living in a Matrix? It thus requires extraordinary effort and more resources than dealing with the testimonial and hermeneutical injustice.

According to Dotson, the way to tackle the third-order epistemic injustice is not only for the hearer to extend 'extraordinary amounts of credibility' to the speaker (addressing the testimonial injustice, added by author); 'they must also be open to radical conceptual revolutions in the face of, ... profoundly insufficient shared epistemic resources' (addressing the hermeneutical injustice, added by author). 'But they must also...grapple with the resilience of

their epistemological systems to grasp what portions of their overall epistemic life ways are thwarting robust uptake of the testimony' given by the speaker (addressing third order epistemic injustice, added by author) (p. 132).

To put this insight into the context of *Sarayaku vs. Ecuador*, the Court indeed extended extraordinary amounts of credibility to the Sarayaku people by, for example, doing an on-site visit to their territory and listening to their testimonies in their own way of speaking, and believing the Indigenous people's account of their spiritual relationship to the land: Even the Court does not function on such spiritual belief. In this sense, the Court did try to address the testimonial injustice (either intentionally or coincidentally). Second, as some scholars pointed out, the Court did go to extraordinary lengths to try to expand the concept of right of property (Townsend & Townsend, 2021), so that this concept as in the Inter-American Treaty of Human Rights can be used as an umbrella term to protect Indigenous peoples' rights to their land.<sup>10</sup> This effort, in a way, serves to fill in the hermeneutical gap of the society and thus an effort to address the hermeneutical injustice.<sup>11</sup> However, what the Court failed to do is to recognise the limitation of the epistemology within which the Court functions. Therefore, what we observed from the case is, in spite of its good intentions and enormous effort to address the unjust treatment of the Sarayaku people, the Court still fell short of acknowledging the spirituality of Sarayaku people on its own merits. Instead, the Court used expert testimony which translated the Sarayaku people's epistemology into the epistemology that the Court could recognise. This practice in turn harms the Sarayaku people's capacity in protecting nature in accordance with their worldviews. By equating these with 'culture identity', the sacredness of nature is overlooked through an anthropocentric lens. Nature, in this sense, becomes compromisable.

To address this problem is not easy. In a way, we could even say that the Court has done what it could. What is left to be done to address the third-order epistemic injustice requires extraordinary awareness of the limitations of one's own epistemic condition. The hearer, in this case, is requested to acquire the power to deal with a cognitive paradoxical position and asks the question: *how do we know what we know?* I suggest that to possess this ability, in a way, is to require that hearer be 'exceptional' (Fricker, 2007, pp. 104–107); i.e. to be able to think outside of their time and space.

This, however, does not mean that a virtuous approach is not suitable in addressing the third-order epistemic injustice. It is just that the subject of the said virtue transpires to the people who possess the capacity for such awareness. In this sense, I suggest that to address the third-order epistemic injustice, the responsibility falls upon the particular individuals in the society who are able to identify such issues to share their thoughts with the society in a way that makes sense to it. That is, to try to bridge different epistemic worlds by at least provoking the awareness of the existence of such conflicts and injustice. The hearer, in this case, does not have a particular moral or ethical obligation to recognise their own epistemic condition. Rather, the people who can recognise it should share this observation to the hearer in the way the hearer can understand. Consequently, in the *Sarayaku people v Ecuador*, it is upon the scholars as well as intellectual activists to address to the Court (the hearer) what it has been missing in a way that allows the Court to adopt it for future reference with a view to hearing and understanding the Indigenous peoples' concerns regarding representing and protecting nature and, directly or indirectly, recognising nature's interests, even rights. This acquisition of virtue takes place not only at an individual and institutional, but also social level. To put it differently, this is the virtue of public intellectuals (or anyone who can conduct such a thought process) in a society.

## Conclusion

This chapter focuses on the specific scenarios when Indigenous peoples are the voice of nature in a predominantly non-Indigenous society – a dual-stakeholder situation. These Indigenous voices for nature are usually deemed as neither credible nor rational and therefore dismissed by the mainstream discourse in the given society due to epistemic injustice. The marginalization, or even oppression, of the Indigenous communities' voice for nature, furthermore, disrupts the capacity of Indigenous peoples to represent nature meaningfully, which harms both the Indigenous peoples and nature in question. Based on the taxonomies in the work of Miranda Fricker (2007) and Kristie Dotson (2014), i.e., testimonial injustice, hermeneutical injustice, and third-order injustice, this chapter places three types of epistemic injustice in the context of engaging Indigenous peoples and nature as a dual-stakeholder. This was exemplified by three cases: the *Mbyá-Guarani* tribe's participation in the public meeting regarding their relocation; Djab Wurrung's protection of their sacred Birthing trees; and *Sarayaku v Ecuador*. Finally, this chapter argues how to use a virtuous approach (from an individual, institutional, and societal level) to address testimonial, hermeneutical, and the third-order epistemic injustice encountered by Indigenous peoples when representing nature. This perspective could contribute to improving the MSE process for nature as well as for socially disadvantaged groups. The overarching point of this chapter is to show how we can use epistemic injustice as a lens to check whether stakeholder engagement is done in an epistemically just way, especially in the context of engaging nature – an affected stakeholder that cannot speak for itself – via Indigenous peoples. Since epistemic injustice during the stakeholder engagement goes largely unnoticed, a virtuous approach calling for the awareness to spot such injustice holds particular importance in addressing relevant MSE issues.

## Notes

- 1 Many countries have passed legislation that bestows nature or certain natural objects rights. For example, at the national level, there are the Constitution of the Republic of Ecuador 2008, Bolivia Law of the Rights of Mother Earth 2010 and the Framework Law of Mother Earth and Integral Development for Living Well 2012, New Zealand Te Urewera Act 2014 and Te Awa Tupua Act 2017, etc. At the sub-national level, there are, for instance, 2006 Tamaqua Borough in Pennsylvania, which is the first borough in the world to legitimize RoN. In terms of court rulings, in 2016, Colombia's Constitutional Court ruled that the Rio Atrato possesses rights to 'protection, conservation, maintenance, and restoration,' and established joint guardianship for the river shared by indigenous people and the national government. In 2017, Indian Uttarakhand's high court issued an order giving the Ganga and Yamuna rivers fundamental rights and legal personality, which, however, was later suspended by the Indian Supreme Court. For up-to-date RoN initiatives in the world, see <https://www.garn.org/rights-of-nature-timeline>. See also A. Putzer et al. (2022).
- 2 There isn't an official definition of 'Indigenous' adopted by any UN system body. This is because the UN system believes the most fruitful approach is to identify, rather than define Indigenous peoples. Instead, the UN system has developed an understanding of this term based on the following: '(1) Self-identification as indigenous peoples at the individual level and accepted by the community as their member. (2) Historical continuity with pre-colonial and/or pre-settler societies. (3) Strong link to territories and surrounding natural resources. (4) Distinct social, economic, or political systems (5) Distinct language, culture and beliefs. (6) Form non-dominant groups of society. (7) Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.' See: [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf).
- 3 It is worth noting that not all indigenous communities hold similar positions regarding representing and protecting nature. For example, in the case *Kichwa Indigenous People of Sarayaku v. Ecuador*

- (2012), it was documented that the Indigenous People of Canelos attacked Kichwa Indigenous People of Sarayaku and tried to prevent the latter from going to Puyo to march for peace and life for the purpose of preventing the big oil companies from polluting and damaging the territory. Nonetheless, there is also evidence that there is an extent of similarity, especially in the context of epistemology, among Indigenous peoples around the world. For example, some scholars observed that the processes for the acquisition and transmission of Maori traditional knowledge are essentially similar to the Indigenous populations in Canada. See Fikeret Berkes (2009).
- 4 For instance, on the website of the United Nations Development Programme (UNDP), it is acknowledged that ‘Indigenous communities lead on protecting the environment’ and that ‘Indigenous Peoples are fighting climate change every day.’ [https://stories.undp.org/10-things-we-all-should-know-about-indigenous-people?gad\\_source=1&gclid=EAIaIQobChMIoZu00a-vggMVPpRoCR3h6AdmEAAAYAiAAEgJSaFD\\_BwE](https://stories.undp.org/10-things-we-all-should-know-about-indigenous-people?gad_source=1&gclid=EAIaIQobChMIoZu00a-vggMVPpRoCR3h6AdmEAAAYAiAAEgJSaFD_BwE).
  - 5 It should be noted that because epistemic (in)justice theory is a rich and broad theory of philosophy, to give this branch of knowledge a comprehensive introduction exceeds the scope of this chapter. With a practical and introductory focus, aiming at not only scholars, but also practitioners and affected stakeholders, this chapter introduces some of the most pertinent types of epistemic injustice, without getting into the larger philosophical debate, but rather focusing on the relationship between those concepts and the practice.
  - 6 Fragoso noted that the SOPRECAM (Society for the Ecological Preservation of Camboinhas), ‘despite their environmental discourse, saw the *Mbyá-Guarani* as a threat, because they were concerned with the devaluation of their properties’. See Fragoso, p. 370.
  - 7 In the article by Dotson (2014), she uses terms such as *epistemic exclusion* and *epistemic oppression*. Here, I will only use epistemic injustice as an umbrella term to avoid possible confusion, which also includes epistemic exclusion and epistemic oppression.
  - 8 See, e.g., *The Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001), *Mary and Carrie Dann v United States* (2002), *Sawhoyamaya Indigenous Community v Paraguay* (2006), *The Saramaka People v Suriname* (2007).
  - 9 By the time of the writing, the project is halted as a result of mass protests. The 2013 cultural heritage management plan (CHMP), which originally approved the removal of the Birthing trees, was subsequently overturned. The current government is awaiting the results of a new CHMP. Although this is a step forward towards protecting the Birthing trees, a recent exchange documented between the State government representatives and the opposition regarding this issue has shown neither party is aware of the epistemic injustice done to the Djab Wurrung people in this case. During the exchange, the opposition criticized the government for halting the road construction and reiterated concerns about road safety impact. Meanwhile, government representatives seem to recognise this only as a culture heritage issue and continue to collaborate primarily with the Eastern Maar, rather than the Djab Wurrung people (MacGillivray, 2024).
  - 10 Here, I acknowledge that the use of the example of the right to property in the Townsends’ article is originally to show the hermeneutical injustice in the Court conduct. However, I disagree with the author on this point. Because the very effort of the Court trying to expand the concept of right to property to accommodate the Indigenous people’s relationship with their land, although it may not successfully or entirely capture such a relationship, shows that the Court is making an effort to fill the hermeneutical void in this regard. Therefore, it should be assessed positively, especially given that epistemic injustice is first and foremost an ethical issue.
  - 11 Though as Townsend and Townsend (2021) have addressed, such effort may not be enough. That is also because of the lack of the awareness of the third-order injustice.

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## **PART II**

# **Meaningful Stakeholder Engagement in Impact Assessment and Other Semi-regulated Contexts**



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# 6

## THE LONG AND WINDING ROAD TO MEANINGFUL PUBLIC PARTICIPATION IN IMPACT ASSESSMENT

### A Review of Key Issues in the Brazilian and Canadian Federal Assessments

*Alberto Fonseca and Patricia Fitzpatrick*

#### **Introduction**

Public participation has been a key component of environmental impact assessment<sup>1</sup> (EIA) since its dawn. The United States' 1969 National Environmental Policy Act (NEPA), which inspired the proliferation of impact assessment systems<sup>2</sup> globally (Yang, 2019), was originally designed to consider, to some extent, public perception in the preparation and review of environmental impact statements (EIS), thus strengthening the decision-making process over development proposals (Eccleston, 2008). The NEPA-inspired EIA systems that emerged all over the world in the past decades followed suit. Most countries have made public participation mandatory in EIA procedures. Even non-democratic regimes, such as China (Johnson, 2020; Xu et al., 2022; Yew & Zhu, 2019), require to some extent that the public be involved in EIA decision-making.

The ubiquity of public participation in EIA systems is understandable. Participation has the obvious potential to improve decisions (Dietz & Stern, 2008, p. 44). Such potentials, as O'Faircheallaigh (2010) sums up, can be achieved, for example, by:

- keeping the public informed,
- involving people to fill information gaps,
- creating opportunities for the public to contest statements and decisions,
- facilitating problem-solving and social learning,
- sharing the decision-making process with the public,
- including the views marginalized and Indigenous groups, and
- broadening or shifting the locus of decision-making.

Not surprisingly, public participation has long been considered one of the most important ‘best practice’ components of EIA (André et al., 2006; Morrison-Saunders et al., 2023; Sinclair & Diduck, 2017). However, as Lawrence (2003), Glucker et al. (2013) and many others noted, the theoretical benefits of public participation are more apparent than real, given the lack of clear evidence of such benefits on the ground. Even before the implementation of NEPA in the United States, analysts were questioning the act’s capacity to consider citizens’ voices in the decision-making process (Hanks & Hanks, 1969). Similar concerns have echoed throughout the years wherever EIA was implemented. For example, a recent review of the EIA literature in Europe has shown that scholars routinely criticize the practice of public participation in EIA, particularly its timing (participation often happens too late in the process) and its actual capacity to influence decisions (participation has traits of tokenism) (Suškevičs et al., 2023). Similar findings are presented in Chapter 7 by Larsen and Buhmann (2024). It is now well-known that a poorly designed engagement program can limit the potential of public voices to shape EIA decisions.

This chapter set out to: 1) review contemporary thinking surrounding participation in EIA; 2) explain how several public participation issues have been regulated and practiced in democratic EIA jurisdictions, using Brazil and Canada as empirical contexts; 3) compare the Brazilian and Canadian experiences; and 4) understand how close or distant both countries are from best practice and how likely they are to overcome historical barriers to more meaningful participation in impact assessment.

This study is based on systematic literature and regulatory reviews. It adopted a checklist of key public participation issues to evaluate and compare the federal Brazilian and Canadian experiences, based on reviews of federal assessment laws and regulations in the two countries. Findings are discussed considering an integrative literature review of previous normative studies on what constitutes best practice meaningful participation in EIA systems, and of empirical evaluations of public participation in Canada and Brazil.

### **Key Issues to Meaningfully Embed Public Participation in EIA Systems<sup>3</sup>**

There is a significant body of literature that examines public participation in EIA canvassing a variety of aspects, including objectives, methods, and program design characteristics, among others. This literature has been increasingly calling for more meaningful participation, that is participation that “... establishes the needs, values, and concerns of the public, provides a genuine opportunity to influence decisions, and uses multiple and customized methods of engagement that promote and sustain fair and open two-way dialogue” (Sinclair et al., 2022, p. 242; Sinclair & Doelle, 2018). Among the desirable components of ‘meaningfulness’ that are recurrently highlighted by EIA scholars are the following:

- Involvement of the public early in process so participants can shape the discussions and have an impact on decisions (Doelle, 2018), including participation in decision-making over strategic development plans and programs (Rega & Baldizzone, 2015);
- Adequate notice and sufficient time to prepare an informed submission (Doelle, 2018; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007);
- Participant assistance (Doelle, 2018; Stewart & Sinclair, 2007), including funding and capacity-building;
- Modes of participation which promote two-way dialogue (Stewart & Sinclair, 2007), which can allow for learning (Doelle, 2018; Stewart & Sinclair, 2007);

- Access to information to ensure transparency throughout the project life cycle (Sinclair & Diduck, 2016);
- Implementing the principles of natural justice (Doelle, 2018), including access to process, through hearing requirements, written and oral comments, and the right to challenge decisions (Woods, 2009); and
- Reporting back on how public comments are addressed, through tools such as an issues-tracking table.

The interplay amongst these elements necessitates careful consideration of each component, as well as how these components fit in the overall plan. When designing, discussing, or evaluating participatory EIA systems, it is important to understand several issues.

At the center of any engagement project is the question of empowerment – specifically how much control is afforded to the interested public in the decision-making process. One of the earliest works in this area was carried out by Arnstein (1969), who conceptualized the famous 8-rung ladder of citizen participation, as discussed in introduction of this handbook (Buhmann et al., 2024). The International Association of Public Participation (IAP2, 2023) later reduced the levels of empowerment to five: inform, consult, involve, collaborate, and empower. Scholars often call for the empowerment of the public(s) in decisions. This goal is aligned with ensuring that state decisions better consider both economic interests (as represented by corporations) and public interests (as represented by public(s)) in the decision. In practice, however, engagement opportunities, particularly those identified in legislation, better lend themselves to tokenism – informing the public about the project, and providing some entryways into sharing information with the decision-maker. This mismatch between individual expectations and design limitations can lead to disillusionment and disenfranchisement by participations, who come to see project approval as a ‘foregone conclusion’ (e.g., Diduck & Sinclair, 2002; Diduck et al., 2002).

Even if the intent is to empower participants, however, admission to EIAs typically relies on an informed public who volunteers their expertise and information pro bono to corporations and the government. Notably, effective empowerment is reliant on active funding programs to educate, develop capacity, and better enable meaningful public engagement. Unfortunately, few EIA systems provide such resources.

With respect to program design, the program must consider who should be involved, how they can effectively participate, what are participants permitted to say, and how long that engagement is sustained. Such issues are critical to the effectiveness of EIAs but may vary significantly within and across jurisdictions.

Who should be involved may differ depending on the stage of the assessment. Fung (2006) provides an 8-level typology which is applicable to any public interest decision (see Figure 6.1). At one end is the State, which includes professional politicians and administrative experts typically engaged in decision-making. At the other end of the spectrum is the public-at-large. In the middle are five types of “stakeholders” which can be used as proxies for the general public (see also Bherer & Breux, 2012; Fung, 2003).

While Fung (2006) provides an important entry point for EIA engagement, additional components must be considered. For example, this approach does not include appropriate inclusion of Indigenous governments and rights-holders, who, under the United Nations Declaration on the Rights of Indigenous Peoples, have internally recognized rights related to free, prior, and informed consent surrounding resource development (among others), as



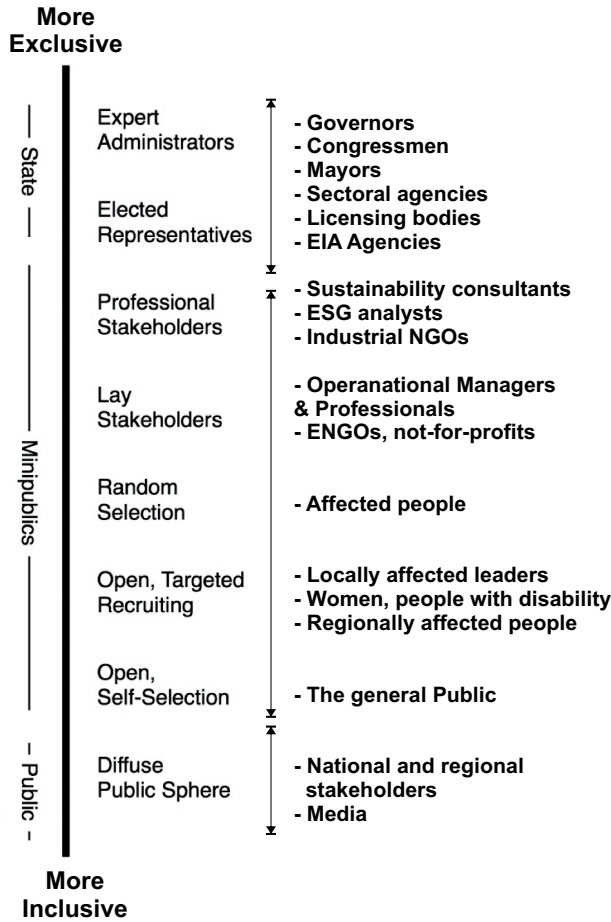


Figure 6.1 Fung’s 8-level typology of involved audiences and a tentative ‘translation’ to the EIA context

Source: Adapted from Fung (2006)

discussed in Chapter 8 by Storey (2024). Second, the nature of the spectrum implies that participation happens with one level, when, in fact, EIA may involve each group at different times of the process. While universal participation might seem aspirational, at times it may be inappropriate to include some stakeholders.

With respect to “how” stakeholders get involved, despite considerable literature surrounding **techniques** (see Sinclair et al., 2022 for a summary), engagement in EIA can be limited. Legislation typically identifies times and methods for information sharing (such as notification requirements, and a public registry) and windows for input, such as to the scope of the assessment, or a critique of the impact statement. The windows are often very short in nature, and the means through which input is facilitated by government typically is based on past practices. More often than not an EIA may involve an open house and/or opportunity for written input. In some cases, an EIA includes public hearings (in which input is solicited

through written and/or oral communication). Innovative practices such as technical sessions (used in Canadian Northern Territories for diamonds projects, where expert administrators, and professional and lay stakeholders, all with specific expertise on a valued component, meet to discuss impact) are the exception, rather than the norm.

Another relevant issue is the scope of participation, which refers to the nature of the matter or subject under review, from narrow to broad in nature (Bherer & Breux, 2012; Fung, 2003). Smith (1982) provides additional guidance, organizing the participation themes among three categories: 1) Normative – the broadest scope, addressing societal values and premises which inform a range of decision themes. For example, should a country allow uranium mining? 2) Strategic – the scope that considers the range of alternative means of achieving the normative direction. For example, are new mining pits an appropriate means of contributing to the diamond industry or are there alternative technologies available? 3) Operational – a scope involving a specific, narrow application. For example, should this diamond mine be permitted to operate as proposed? It is important to ensure that the public has an opportunity to provide input into normative and strategic issues which inform operational exercises. This can be done outside project-level decision-making, for example, by involving the public in previous strategic and regional environmental assessments (Rega & Baldizzone, 2015).

Finally, **frequency** of participation also matters. This aspect considers the “reoccurrence and iteration” of the participatory process (Fung, 2003). A single event may lend itself to the provision of information or simple input opportunities but matters where specific background knowledge is needed require multiple interactions.

The treatment of the above-mentioned issues is inevitably variable within EIA procedures. Participation can be resource- and time-consuming; for the sake of procedural efficiency the public cannot always be deeply and frequently empowered to question each micro-step of the EIA process. However, at the same time, lack of or weak participation can result into questionable and contentious decisions. The next section explores how this plays out in two jurisdictions – Brazil and Canada.

### **The Practice and Regulation of Public Participation in Federal EIAs in Brazil and Canada**

Brazil and Canada are two large western countries that together cover more than 10% of the world’s land area. They are both known for their abundant natural resources and global environmental significance. Unsurprisingly, both countries have long made project-level EIA mandatory for certain resource management decisions. These two countries are also democratic, but in different ways. Canada scored 8.8 in the 2022 Democracy Index<sup>4</sup>, being a clear case of “full democracy” with reliable electoral processes, functioning governments, civil liberties, etc. Brazil scored 6.75 in the same index, a situation that puts the country in the middle of a group of “flawed democracies” (EIU, 2023) with persisting institutional problems.

Arguably, participatory federal-level EIAs in Canada and Brazil, which tend to be the most resourceful procedures, are indicative of current practice in a wide range of developed and developing economies. Participation in EIA tends to be weak in authoritarian and hybrid regimes, but in democratic countries like Canada and Brazil levels of participation are likely higher. Many studies have evaluated the practice of public participation in these two countries, but very few of them have tried to synthesize, let alone compare, the degree to which the

key issues highlighted in the previous section are being addressed by regulations and likely reflected in practice.

A practical way to elucidate the participation requirements and practice in EIAs is by breaking up the EIA process into decision-making stages (Weston, 2000), and then evaluate the incorporation of participation into each stage. Tables 6.1 and 6.2 present the outcome of such an exercise for Brazil and Canada, respectively, adopting the stages that are often used in the EIA literature, i.e., strategic decisions followed by project-level decisions concerning screening, scoping, impact assessment reporting, reviewing, approval/rejection, and follow-up. The key issues are evaluated within each of these stages.

Based on Federal Law 6938/81, Federal Decree 99274/2000, CONAMA Resolutions 01/86, 01/87, 09/87 and 237/97, Complementary Law 140/2011, and Ibama Normative Instructions 184/08, 08/11, 14/11, 06/13, and 26/19.

The regulatory roots of federal-level EIAs in Brazil go back to the early and mid-1980s, a period of re-democratization in the country. The main EIA regulation (CONAMA Resolution 01 from 1986), which is still in effect, set up a NEPA-like procedure, in which the public participates mainly by being informed about development projects and its impact statements and, at times, by providing opinions and expressing their views in public hearings. The CONAMA resolution 09/1987, which provides general rules for public hearings, is still the main regulation for public input in EIA. This resolution, however, does not cover the processing of information. It mandates developers and EIA authorities to implement one or a few public hearings but does not require them to explain and follow up collected opinions. The incorporation of hearings' outcomes in decisions is not binding. So, in practice, while the public and minipublic can express their views in EIA hearings, EIA reviewers and decision-makers rarely mention the influence of public input into their recommendations and decisions (Rocha et al., 2019).

Moreover, the public is asked to provide inputs late in the assessment and review stages of the EIA decision-making process. Brazil does not have strategic environmental assessment (SEA) legislation. Broad development plans and programs are decided by State authorities with almost no public input. And when project-level EIA starts, the public is not involved in screening and scoping decisions. They are given a narrow window of opportunity to comment on the project and its EIA report in single-event public hearings. As a result, the public plays an operational role, expressing opinions that might influence to some extent the implementation of projects and the mitigation of adverse impacts. Very rarely do state authorities in Brazil decide to reject proposed projects based on public inputs (Fonseca & Gibson, 2021).

In the post-approval stage, the public can be involved in monitoring and follow-up programs, but this is not mandatory. The Brazilian legislation mandates only access to information. But access to EIA information has long been hampered by the inefficiencies of Brazilian information systems (Fonseca & Resende, 2016). EIA registries, particularly the ones created by the federal licensing agency (Ibama), are not user-friendly and complete. Many relevant documents (e.g., review reports, monitoring reports, etc.) are not readily available; the public needs to file formal information requests to access them.

Overall, the current regulation and practice of public participation in federal EIAs in Brazil still reflect the realities of the 1990s. The public still has limited access to EIA information and can express their views late in the decision-making process only hoping to marginally influence operational decisions (Fonseca & Gibson, 2021). The outcomes of public participation are, of course, context-dependent. However, in the broader context of federal EIAs in Brazil, public

Table 6.1 Public participation requirements and practice in federal EIAs in Brazil

	<i>Involved audiences</i>	<i>Techniques</i>	<i>Level of engagement</i>	<i>Frequency of inputs and problem-solving techniques</i>	
<i>Decision-making stages</i>	<i>State; minipublic; public</i>	<i>Passive information sharing; public input; problem-solving</i>	<i>Inform; consult; involve; collaborate; and empower</i>	<i>Single event, low frequency, high frequency.</i>	<i>Overall evaluation of each stage</i>
<b>Strategic decisions about development plans and programs</b>	Brazil has no SEA legislation. Strategic decisions are carried out by State officials with almost no consultation (exception is the hydroelectric sector, which carries out some regional assessments with some public inputs).	Only passive information sharing techniques (exception for hydroelectric sector)	Narrowly focused on informing the public and minipublic.	No legal requirement for single events let alone frequent consultation or problem-solving techniques with public and minipublic.	<b>Strategic and regional development plans and programs do not go through impact assessment. Participation of public and minipublic is mostly based on passive information sharing. The exception is the hydroelectric sector whose regional assessments are regulated and require occasional public consultations.</b>
<b>Project-level EIAs</b>					
<b>Screening decisions about which projects should be subject to EIA</b>	State authorities make screening decisions without consultations. The public and minipublic do not have a say on screening decisions.	Use of passive information-sharing techniques (newspaper and EIA registry), and occasional consultations with government agencies.	Very superficial level: inform and eventually consult.	Single events.	<b>The public and minipublic participate as spectators; they do not have a say on screening decisions. Eventually other government authorities express their preferences.</b>

(Continued)

Table 6.1 (Continued)

	<i>Involved audiences</i>	<i>Techniques</i>	<i>Level of engagement</i>	<i>Frequency of inputs and problem-solving techniques</i>	
<i>Decision-making stages</i>	<i>State; minipublic; public</i>	<i>Passive information sharing; public input; problem-solving</i>	<i>Inform; consult; involve; collaborate; and empower</i>	<i>Single event, low frequency, high frequency.</i>	<i>Overall evaluation of each stage</i>
<b>Scoping decisions over which issues should be covered in impact assessment studies</b>	Scoping tends to be rigid, based on standardized Terms of References. Developers may negotiate with EIA agencies tailored TRs, but without consultations with public and minipublic.	Use of passive information-sharing techniques (EIA registry), and occasional consultations with government agencies.	Very superficial level: inform and eventually consult.	Single events.	<b>The public and minipublic participate as spectators; they do not have a say on scoping decisions. Eventually other government authorities express their preferences.</b>
<b>Assessment decisions about the location and relevance of affected areas, about the identification and evaluation of impact significance, and proposals of mitigation and compensation measures</b>	Developers and consultants involve the public and minipublic when preparing EIA reports. Large projects have to implement one or more public hearings to capture the perception of the public, minipublic and State authorities.	Mostly passive, information-sharing techniques, but with one or few opportunities for public and minipublic input. Public hearings are the main window of opportunity to express preferences.	Covers mostly two levels (inform and consult).	Single event or very low frequency consultations (hearings).	<b>The public, minipublic and other State authorities are informed about assessments and can express their preferences in hearings.</b>

<p><b>Review decisions about the quality and accuracy of impact predictions</b></p>	<p>The public and minipublic do not participate in the review process. The Federal licensing agency review all the information, including inputs from public hearings, and writes a review report with a final decision recommendation.</p>	<p>This phase includes passive information sharing.</p>	<p>Restricted to the first level: inform.</p>	<p>No frequency, because there is no participation</p>	<p><b>Review is ‘opaque’, in the sense that the public and minipublic are not involved; they can only read the review report prepared by the Federal licensing agency.</b></p>
<p><b>Statutory high-stakes decision: approve or reject proposed projects?</b></p>	<p>The president of the licensing agency makes the final decision, which tends to reflect the recommendation of the EIA review report.</p>	<p>Techniques are restricted to meetings and information sharing.</p>	<p>Level of engagement is low, restricted to inform.</p>	<p>Single events.</p>	<p><b>This is a ‘behind closed doors’ phase with State authorities making a decision, which is formalized in the environmental license and its conditions. Rationale of decisions is not transparent; it tends to implicit in review reports.</b></p>
<p><b>Follow-up decisions about the actual monitoring and management of impacts</b></p>	<p>State, minipublic and Public may involved in many ways, but State authorities and proponents play key roles.</p>	<p>Includes passive information sharing, and public input techniques and to certain extent problem-solving techniques. There is no online Registry to access monitoring reports. The public needs to request information.</p>	<p>Covers mostly one level (inform). Developers can voluntarily consult and involve, but this is rare.</p>	<p>Single event or very low frequency consultations.</p>	<p><b>Participation of public and minipublic neither required nor encouraged in follow up. However, developers at times consult and involve with particular stakeholders.</b></p>

Table 6.2 Public participation requirements and practice in federal EIAs in Canada

	<i>Involved audiences</i>	<i>Techniques</i>	<i>Level of engagement</i>	<i>Frequency of inputs and problem-solving techniques</i>	<i>Overall evaluation of each stage</i>
<i>EIA decision-making stages</i>	<i>State; minipublic; public</i>	<i>Passive information sharing; public input; problem-solving</i>	<i>Inform; consult; involve; collaborate; and empower</i>	<i>Single event, low frequency, high frequency.</i>	
<b>Strategic decisions about broad development plans and programs</b>	Participation involves mostly State audiences and the mini-public, with timid participation from the public.	Mostly passive, information-sharing techniques, but with some opportunities for minipublic input. Participant funding is also available.	Most focused on inform and consult.	Single-event or low-frequency consultations.	Minipublic is eventually and superficially involved to legitimize and improve operational aspects of State authority decisions over regional and strategic development plans.
<b>Project-level EIAs</b>					
<b>Screening decisions about which projects should be subject to EIA</b>	The 2019 IAA encourages participation from minipublic and public in an early planning phase, which mixes screening and scoping activities. Different State authorities, and provincial and Indigenous authorities may also be involved, at times in formal agreements.	Intensive use of passive information sharing techniques, consultations, and more active problem-solving techniques. Electronic systems and communications are also intensively used. The Public Participation Plan is a key document in this phase.	Covers at least four levels (inform, consult, involve and collaborate). The extent to which empowerment happens is contextual and debatable, but probably very low.	Potentially high frequency of public input and opportunities for problem-solving techniques.	The public, minipublic and State are actively and, at times, deeply involved in the operational aspects of impact assessment planning, collaborating in the creation of tailored plans and guidelines.

<p><b>Scoping decisions over which issues should be covered in impact assessment studies</b></p> <p><b>Assessment decisions about the location and relevance of affected areas, about the identification and evaluation of impact significance, and proposals of mitigation and compensation measures</b></p>	<p>Involved audiences will reflect the Public Participation Plan, likely including minipublic and public actors.</p>	<p>Mostly passive, information-sharing techniques, but with one or few opportunities for public and minipublic input. Participant funding is also available.</p>	<p>Covers at least three levels (inform, consult, involve). The extent to which collaboration and empowerment happens is contextual and debatable but tends to be low.</p>	<p>Single-event or very low-frequency consultations.</p>	<p>The public, minipublic and other State authorities participate weakly in this phase checking compliance with plans and terms of references and occasional inputs.</p>
<p><b>Review decisions about the quality and accuracy of impact predictions</b></p>	<p>In Canada, assessment and review are a bit mixed, because developer's impact statement will feed an impact assessment by a Review Panel or Integrated Review Panel. During this process, minipublic and public (including Indigenous groups) are involved, as well as other State departments from the federal level and jurisdictional levels.</p>	<p>This phase includes passive information sharing, and public input techniques and to certain extent problem solving techniques.</p>	<p>Level of engagement will vary depending on the audience, but overall this phase will include inform, consult, involve and collaborate. Empowerment also takes place to some extent.</p>	<p>Single events, low and high frequency consultations; and low frequency of problem-solving.</p>	<p>The public, minipublic and other State authorities participate in this phase reviewing and providing comments on draft documents, expressing preferences in hearings and in engagement activities. Minipublic takes a strong role in writing impact assessment report; and the State agency in writing a Consultation Report.</p>

(Continued)



Table 6.2 (Continued)

	<i>Involved audiences</i>	<i>Techniques</i>	<i>Level of engagement</i>	<i>Frequency of inputs and problem-solving techniques</i>	<i>Overall evaluation of each stage</i>
<i>EIA decision-making stages</i>	<i>State; minipublic; public</i>	<i>Passive information sharing; public input; problem-solving</i>	<i>Inform; consult; involve; collaborate; and empower</i>	<i>Single event, low frequency, high frequency.</i>	
<b>Statutory high-stakes decision: approve or reject proposed projects?</b>	One State authorities participate (Minister, Governor in Council and Agency) in this phase.	Techniques are restricted to meetings and information sharing.	Level of engagement is low, restricted to inform.	Single events.	This is a ‘behind closed doors’ phase with State authorities making a decision, which is published in a Decision Statement that must be explicit about the public interest, and enforceable conditions to proponents. The statement, however, tends to be very brief and not sufficiently clear about the decision rationale.
<b>Follow-up decisions about the actual monitoring and management of impacts</b>	State, minipublic and Public are involved in many ways, but State authorities and proponents play key roles.	Includes passive information sharing, and public input techniques and to certain extent problem solving techniques. There is an online Registry to share many types of information about the follow-up phase.	Covers at least three levels (inform, consult, involve). The extent to which collaboration and empowerment happens is contextual and debatable, but tends to be low.	Single event or very low frequency consultations.	Participation of public and minipublic are encouraged in follow-up / monitoring activities. State authorities play enforcement roles and analyze and oversee information sharing and analysis. Decisions can be amended in the event of non-compliance and problems in operations.

Source: Impact Assessment Act (2019) and respective regulations, policies, guideline documents and templates.

participation is generally unlikely to empower the public to influence approval or rejection decisions. Participation can add a bit of legitimacy and social learning to the most operational and marginal aspects of project design, and, most clearly, to the mitigatory measures to be adopted during project implementation.

Canada has a long-standing interest in EIA – dating back to 1973 – at both the federal and provincial/territorial levels. As a federated state, the *Constitution Act (UK)* (30& 31 Vict C3) (see SS 91, 92, & 92A) divides sovereign powers between the federal and provincial governments. The federal government typically has powers over aspects that typically and historically impact the nations, including currency, the military, banking, and interprovincial matters. The provinces have power over aspects that fall within their political borders, including resource development. Unfortunately, matters related to the environment, including EIA, are not enumerated in the Constitution, as explained by Fitzpatrick et al. (2021). As such, the federal and provincial/territorial governments each have distinct EIA legislation, including what types of development are subject to review, the factors to be considered in the EIA, the basis on which a decision is rendered, and how the public is involved in the assessment.

In 2019, following an extensive national public consultation (CEAA, 2017; Doelle & Sinclair, 2019), a new federal assessment process was introduced. The Impact Assessment Act (SC 2019, c 28) [hereafter IAA] responded to longstanding criticisms of project specific EIAs across Canada by adding an early, transparent planning stage for the process; expanding the scope of factors that must be considered in a federal review (including direct social impacts, economic impacts, contributions to sustainability and gender-based analysis plus, among others); adding more features to ensure meaningful engagement (Table 6.2); and framing the decision based on a public interest determination which includes consideration of the project's contribution to sustainability, the impacts on Indigenous groups, and how the project hinders or supports Canada's commitments related to climate change, among others.

While these were important improvements, criticisms remained. The full federal Act applies only in very limited circumstances, relying heavily on a predefined list of designated projects (Physical Activities Regulations SOR/2019-285) to specify which projects are subject to assessment. Most federal assessments are undertaken with specific federal departments, such as Fisheries and Oceans Canada, or Indigenous Services Canada. These “federal projects” have only two requirements: post a notice when the assessment is commenced, and post a notice of determination when the decision has been made.

Criticisms of the federal Act were also levied by several provinces. Led by Alberta, the Supreme Court of Canada was asked to determine if the federal Act and the regulations were unconstitutional as it applied to activities which were in provincial jurisdiction. In October 2023, the court found, in part, for the provinces. The ruling noted that the federal government has jurisdiction over “federal projects.” However, the court found that the designated projects is problematic as things within federal jurisdiction do not drive the final public interest determination. As such, the federal government, at the time of writing this chapter, was working on “targeted and meaningful amendments” to the legislation (IAA, 2023c). Notably the Supreme Court was silent on the approach to engagement set out in the Act; presumably these provisions will continue post-amendment.

Like Brazil, which has a fragmented regulatory framework, Canada's main statutes concerning federal-level public participation are dispersed in the 2019 IAA and its regulations and policies, as well as in Energy, Nuclear and other sectoral norms. The concept of public participation is a key component of federal assessment and most of its stages, which are often described in Canada as sequence of five phases: 1) planning (which concerns screening and scoping

decisions); 2) impact statement (which concerns developers' project description and impact studies); 3) impact assessment (further studies and reviews of the impact statements, unfolding into other documents, such as consultations reports, impact assessment reports and list of conditions prepared by the State, panels or integrated review panels); 4) decision-making (in which State actors, e.g., Minister and Governor in Council, make a high-stakes decision as to whether or not the proposed project should move forward); and 5) post-decision (which consists of the typical follow-up activities of monitoring, auditing, communication, management, etc.).

One of the most important novelties of the 2019 act was the introduction of a more proactive approach to public participation in EIA, at least for those few projects (most EIAs in Canada fall under sub-federal jurisdictions) that are screened in the federal assessment. If an impact assessment is required in the planning stage, the impact assessment Agency of Canada (hereafter "the Agency") will develop a Public Participation Plan setting out the key requirements for public participation throughout the process, e.g., participation objectives, identification of stakeholders, participation approaches, activities, tools, and timelines (IAA, 2023a). Depending on the location of the proposed project, the Agency can also develop other two relevant documents for public participation: an Indigenous Engagement and Partnership Plan and an Impact Assessment Cooperation Plan, thus strengthening the involvement of key stakeholders in the assessment.

During the planning stage, the public, minipublic and relevant State actors (other than the Agency) can provide input and comment on key documents, helping to create a more "Tailored Impact Statement Guidelines", which provides a Terms of Reference for impact assessment studies that is more likely to address the concerns of affected communities. The public with a direct local interest in the assessment, including Indigenous communities, can also apply for participant funding, which will cover reporting costs, professional services, travel expenses and ceremonial offerings, and other expenses associated with public participation throughout the assessment process (IAA, 2023b).

Another way to involve the public and minipublic in Canada's federal assessments is by trusting a review panel (at times, a joint one involving the provincial level) the assessment and reporting of significant impacts, including the evaluation of comments and inputs received in consultations processes and public hearings. The panel has a greater level of independence as the Agency must appoint as a member one or more individuals who are supposed to be "... unbiased and free from any conflict of interest relative to the designated project", or "who have knowledge or experience relevant to the designated project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment". This reflects a type of direct involvement of the minipublic in the decision-making process. One of the key outcomes of this panel-led assessment stage is the preparation of a Consultation Report, which is a document that provides advice to the Minister regarding the adequacy of consultations (including with Indigenous communities) to fulfill the Crown's duty to consult and accommodate, thus bringing more accountability to the consultation processes.

The decision-making stage in Canada, like in many other countries, does not directly involve the public in consultations. Government authorities (the Minister or the Governor in Council) are fully in charge of deciding if the project should move forward. However, this decision must be explicitly based on 'public interest' and must be formally put in a Decision Statement. Among the factors that must be considered in decision-making, besides public interest, are impacts on Indigenous groups, community knowledge, comments from the public, i.e., issues that are directly related to public participation. However, as pointed out by Fonseca and

Gibson (2021), neither impact assessment reports nor decision statements are sufficiently clear about how each factor affect decisions. Almost always, the Minister or Governor in Council will decide to approve proposed projects if they comply with conditions.

One of the key shortcomings of the 2019 Act is that it has quite limited application. Only a narrow list of projects can trigger the assessment process. And despite opportunities for the public to request specific project designations, these are not often successful. A second shortcoming of public participation in Canada is that strategic and regional assessments may (or may not) happen. Such assessments are not mandatory. But even when they are voluntarily implemented by the federal government, public involvement tends to be weak, plagued by numerous constraints (Gauthier et al., 2011). So, when the public is involved in project-level assessments, despite the benefits of providing inputs in the early stages of screening and scoping, many normative and strategic decisions have already been made. As happens in Brazil, participation under the 2019 Canadian impact assessment act tends to influence mostly operational decisions about impact prediction, approval conditions, and mitigation measures to be implemented in the follow-up stage (Doelle & Sinclair, 2021).

## **Discussions**

### *How Brazil compares to Canada – and vice versa?*

The previous section exposed significant differences in how the public may be involved in federal EIAs in Brazil and Canada. These differences occur across the procedural EIA decision-making stages of each country (as one can grasp from Tables 6.1 and 6.2), but, perhaps more clearly, across countries. In general, public participation in federal EIAs in Canada has the potential to be more open, transparent, accessible, resourceful, deep, and frequent than in Brazil.

As for the involved audiences, Canada has a more proactive approach to identifying relevant audiences and ensuring that they are involved in screening, scoping, assessment, review and follow-up. The identification of relevant stakeholders is a formal step of the planning phase and must be documented in the Public Participation Plan. This arguably results in the involvement of a broader range of stakeholders, and, most importantly, of Indigenous groups, which are explicitly mentioned in many statutes of the impact assessment act as a particular audience that requires special treatment. In Brazil, the identification of relevant members of the public and minipublic is carried out by developers and consultants in the preparation of impact statements and public hearings.

Modes of participation are arguably more diverse in Canada as well. This is because the impact assessment regulations, policies and guidelines encourage different types of consultations and engagements (with participant funding available), as well as the implementation of somewhat collaborative processes towards the development of Terms of Reference, review reports, among other relevant documents. As a result, the Canadian public is capable to participate not only as listeners or spectators (which is the most common mode in Brazil), they can also express and, at times, develop their preferences. In both countries, the opportunity to bargain and deliberate are restricted, with some key differences. For example, in Brazil other non-environmental State agencies may significantly influence licensing and approval decisions if they feel that proposed projects may interfere with their mandates. The range of techniques for participation reflects these diverse modes of participation, with Canada enabling more types of passive information sharing, platforms for public input, and opportunities for

problem-solving (though mostly in the planning and assessment phases). It should be noted, however, that, while the Brazilian legislation does not explicitly require the adoption of a diverse range of participation techniques, developers and consultants are probably adopting many more techniques given the strong globalization of the environmental consulting sector. Many EIA consultancies in Brazil are global companies that hold contracts in European and North American countries where the practice of public participation tends to be more diverse.

Levels, frequencies, and scopes of participation are also potentially better in Canada. Participation is explicitly encouraged in several micro-steps of the Canadian federal EIA process. This is reflected in the frequency of public input, particularly in the early stages of the process, as well as in the depth of public interest consideration. In both countries, the public tends to influence operational decisions, but in Canada the opportunities are broader in the sense that the public can comment on a wider range of operational decisions related to the assessment scope, impact predictions, impact significance and acceptability, mitigation measures, among others. Another key difference between Canada and Brazil is access to information. The online information systems in Brazil are still extremely fragmented and limited, making it difficult for the public to understand the decision-making process. While access to EIA reports has improved in Brazil, it is still difficult to access Terms of Reference, correspondences, supplementary information, review reports, monitoring and auditing reports, among others.

The contrast between Brazil and Canada is to a great extent explained by the age of the legislation. The main legal requirements for public participation in Brazil date back to the late 1980s and 1990s, a period with low levels of digital engagements, and generally low expectations of accountability and public participation in decision-making. One could argue that public participation in the Canadian federal impact assessment is better because Canadian law and policymakers have been gradually incorporating what the EIA literature calls best practice meaningful participation. As shown in the next section, the 2019 impact assessment act mirrors some (not all) of the expected components of best practice.

### ***How Practice in Both Countries Compare to Expectations of ‘best practice’?***

As elaborated in the first chapter of this handbook (Buhmann et al., 2024), scholars and analysts in the EIA and other related fields have long been pressuring for stronger, more effective public participation practices in environmental decision-making. This is reflected in the proliferation of best-practice principles and criteria. Among the most well-known best-practice principles in the field of EIA are the basic and operational principles published by the International Association for Impact Assessment in 2006, which call for several generic qualities in participatory processes, such as setting up a participatory process that is proactive (early), focused, supportive, tiered, open, transparent, etc. (André et al., 2006).

There have been many studies evaluating adherence to these and other similar public participation principles in both Canadian and Brazilian EIA jurisdictions. The shortcomings of public participation in Brazil have been particularly documented. Multiple academic studies have indicated that public participation revolves primarily around mandatory public hearings conducted after proponents file draft EIA reports (e.g., Altíssimo & Santi, 2007; Duarte et al., 2016; Marcondes & Diniz, 2020; Rocha, 2008). Furthermore, research has highlighted the inadequate inclusion of Indigenous groups in decision-making (Hanna et al., 2014), the prevalence of stronger resistance against projects in the judicial realm with the assistance of public prosecutors (Hochstetler & Tranjan, 2016), the limited participation during the early stages of screening and scoping (Pedroso Junior et al., 2016), among other findings. A recent

study conducted by Neto and Mallett (2023) has not only reaffirmed the recurrence of these issues but also identified additional challenges, such as difficulties in accessing information, power imbalances between developers and affected communities, and a biased inclination of the State towards project implementation.

Similarly, numerous studies have examined the effectiveness of public participation in Canadian federal assessments. These studies have revealed limitations in formal deliberative EIA processes due to various factors, including insufficient funding for participants (Fitzpatrick et al., 2008), challenges in determining the boundaries of participation and identifying individuals genuinely affected by the impacts (Salomons & Hoberg, 2014), deficiencies in engaging Indigenous or First Nation groups (Booth & Skelton, 2011a, 2011b; Darling et al., 2023; Muir, 2018), and weak participation mechanisms in the follow-up stage (Bernauer et al., 2023), among other concerns. However, it is important to note that most studies on public participation in Canada focused on the previous federal legislation, with only a limited number of studies exploring the extent to which the 2019 act and its regulations can enhance the practice.

The new federal law in Canada is arguably an improvement, as it specifically addresses some of the longstanding deficiencies and aims to promote meaningful engagement. Findings presented here (see highlights in Table 6.2) confirm that the federal Canadian legislation has advanced desirable components of meaningful participation, such as: access to information; early involvement; opportunities for two-way dialogue; and reporting back on feedbacks. However, the extent to which legislation empowers affected people to ‘challenge decisions’ is open for debate. As previously mentioned, only one federal assessment has been completed under the 2019 act. Moreover, one could argue that, despite such regulatory improvements, levels of public engagement are likely to remain predominantly low. As previously shown in Tables 6.1 and 6.2, and further discussed in the introductory chapter of this handbook, levels of engagement in federal assessments tend to be restricted to ‘inform’ and ‘consult’ in both Brazil and Canada. In Canada, the public has the potential to be more deeply involved in the planning (screening and scoping) and assessment and review stages, but not so much in the decision and post-decision stages.

One of the consequences of the low levels of engagement in key EIA decision-making stages (see Figure 6.2) is that the publics, even under the Canadian federal assessment, end up playing more operational roles in decision-making, helping to bring legitimacy to decisions

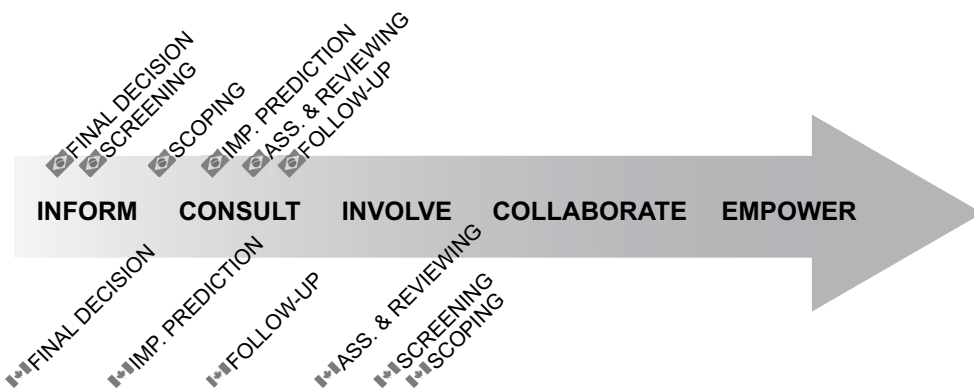


Figure 6.2 Potential levels of public engagement in key stages of federal EIAs in Brazil and Canada

Source: Designed by the authors based on IAP2 (2023)

and, at times, adjusting and improving several issues in connection with scoping, project design, and implementation. The 2019 impact assessment act of Canada, despite using the rhetoric of meaningfulness, is likely far away from empowering the public to question high-stakes decisions related to project approval, let alone more strategic and normative issues concerning development plans and patterns across the Canadian territory.

### **Final Remarks**

This chapter has reviewed several issues that are critical to the promotion of meaningful public participation in the federal EIAs of Brazil and Canada. While doing so, it revealed a sharp difference between the two countries. Public participation in the Brazilian federal EIA system reflects, to a great extent, the realities of the 1990s. Access to information is limited, and the public has late, few, and narrow opportunities to comment and provide inputs in the process, only hoping to influence operational decisions related to project implementation and impact mitigation. Canada, at least at the federal level, improved its regulatory framework in 2019 to ensure that the public is involved earlier in the screening and scoping stages of EIA, collaborating in the customization of Terms of Reference and other documents that can influence the implementation of impact assessment. The impact assessment *per se* is also more open and independent from State authorities in Canada, insofar as it encourages the participation of experts and Indigenous groups' representatives.

However, in both countries the public tends to be involved in operational decisions, having a weak capacity to question broad development assumptions and alternatives. The road to overcoming such gaps is likely a long and winding one – in Canada and, of course, in Brazil. Strengthening levels of public engagement throughout EIA decision-making stages will require significant changes in the culture of environmental decision-making. For example, strategic assessments need to be taken more seriously by policymakers, so that participation in project-level decisions is already embedded in a broader framework of public participation. Moreover, governments need to develop stronger mechanisms to incorporate public inputs in approval or rejection decisions. Final statutory decisions tend to be vaguely anchored in the findings of public hearings and other consultations. In the case of Brazil this gap is much wider. The purpose of EIA and public participation are not even clearly laid out in legislation. Participation and consultations happen without a clear statutory direction. And even access to information is complicated by the lack of reliable registries and other information systems.

Deep empowerment of the public in EIA is complicated. Even if policymakers had the political will to aim higher in terms of meaningful participation, they would face several knowledge barriers. How does one determine the appropriate level of engagement required for a project? Some would argue it is size (i.e., budget), but small projects can have significant impacts on the community. Some would argue that the decision should be governed based on expressed interest, but that would require that both the proponent and the government do a good job at notifying stakeholders and citizens about the proposal. Some would argue that engagement be limited, except in cases of basin-opening projects (e.g., projects with a novella component including use of new technology, or in new regions). But that negates the importance of learning that underpins more effective impact assessment processes.

In addition to that, projects may have a wide range of groups of affected people, some who are adversely affected, some who are positively affected. How does one judge acceptability of trade-offs between different groups of affected people? Another example of persistent challenge

is related to the subjectivity and uncertainty of impacts, particularly the social ones. Proponents and government tend to be ill-equipped for organizing and understanding qualitative data – which is typically contributed by the public. Current consultation practices can mitigate uncertainty, but can also distort realities and pressure for hidden agendas.

This chapter has skimmed the surface of an extremely complicated problem. Realizing the limitations of public participation in EIA is easy; but creating laws, regulations, and procedures to overcome such limitations will require long-term concerted efforts. The Brazilian and the Canadian experiences illustrate such a challenge. Yet future studies should investigate other countries, and not only democratic ones. Scholars should try to understand what promotes more meaningful participation in the context of authoritarian and hybrid regimes. They should also target more specific issues, particularly the specific barriers to meaningful participation in each decision-making stage of the EIA process.

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### Notes

- 1 This chapter refers to the term 'environmental impact assessment (EIA)' in its broadest definition, encompassing not only *ex-ante* biophysical assessments, but also more integrative types of assessments that address social, health, economic, and other issues.
- 2 The term 'EIA system' is vaguely used in this chapter to describe the EIA procedure (screening, scoping, impact studies, review, decision, and follow-up), its participatory components (consultations, hearings, meetings, information systems, etc.) and interconnected policies and tools.
- 3 Part of the literature review presented here was based on Fitzpatrick and Dilay (2020).
- 4 The Democracy Index ranges from 0 to 10 (0–3, authoritarian; 4–5 hybrid; 6–7, flawed democracy, and 8–10, full democracy). It was developed by the Economist Intelligence Unit and is based on five categories: electoral process + pluralism; functioning of government; political participation; political culture and civil liberties.

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# A RIGHT TO HAVE ONE'S SAY BUT NOT TO HAVE ONE'S WAY

## Tensions Affecting Practices and Expectations of Public Participation in Impact Assessment in Iceland and Greenland

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### **Introduction**

The Arctic is a focal point of several economic sectors including mining and renewable energy, with many projects requiring Environmental Impact Assessment (EIA) or, in some countries, stand-alone Social Impact Assessment (SIA). One of the main principles of EIA, according to the International Association for Impact Assessment, is that impact assessment should be 'participative', providing opportunities for interested and affected publics to be informed and involved (IAIA, 1999). In Arctic countries, impact assessment constitutes a main arena for stakeholder engagement around social issues as well, with a shared overall objective of ensuring that local stakeholders, including (potentially) affected communities and individuals, are actively involved (Buhmann et al., 2021). In the following, we refer collectively to these processes as environmental and social impact assessment (ESIA).

Nationally and internationally, invested economic activities related to land, construction, raw material extraction, and other natural resources have expanded across the Arctic in recent decades (Arctic Economic Council, 2021, 2022). Arctic countries' commitments to decreasing greenhouse gas emissions as well as general economic interests in renewable energy have led to a rise in the construction of wind, hydro, and solar power infrastructures. Moreover, the global surge in renewable energy production has also fueled an expansion of mining in the Arctic, for example of copper, zinc, rare earth elements, and other 'transition' minerals, i.e., minerals required for windmills, solar panels, energy storage batteries etc.

This comes at a time when already existing ESIA laws and processes are under scrutiny as to their adequacy for ensuring consultation processes and stakeholder engagement that are adequate for the purposes of affected stakeholders or which they consider relevant and meaningful. For example, the Norwegian Supreme Court (2021) has withdrawn licenses to the Fosen wind farms due to impacts on the reindeer herding of Indigenous Sami people, traditionally using the area. This indicates that the impact assessment process undertaken by involved authorities and companies did not meet its purpose. The Greenlandic government's decision in 2021 to ban raw material exploration involving uranium, which de facto put an end to the large

projected Kuannersuit rare earth elements (REE) project close to the town of Narsaq, can be understood in part as a result of a consultation process that indicated concern among local stakeholders about the health risks of the radioactive uranium by-production, which would have been connected with the REE mining (Government of Greenland, 2021). In addition to severe concern with risks of uranium contamination among parts of the local community, reactions also displayed frustration with the consultation process (Hansen & Johnstone, 2019; Bjørst, 2016). This, too, can be seen as an indication of a disconnect between the consultation process and community expectations and of alignment issues that might have been handled in ESIA processes. Tensions between the formal requirements of an ESIA process and the experienced involvement of affected people have also been observed by the Arctic Council Sustainable Development Working Group on EIA in the Arctic (Karvinen & Rantakallio, 2019). Dahl and Hansen (2019) find that only a fraction of comments provided by affected stakeholders during a consultation process are reflected in subsequent changes to EIA reports.

During research visits to Greenland, Iceland, and other Arctic areas, we have been struck by what appears to be a series of inherent tensions related to ESIA practices and the needs or expectations of affected stakeholders. The tensions suggest that ESIA is frequently experienced by local communities to be conducted in a way that does not deliver a sense of actual participation or a fully ‘meaningful’ process. Based on research and fieldwork on ESIA and public participation in decision-making processes on the use of land, raw materials, and other natural resources, we explore such tensions through three cases in the Arctic region: mining in East Greenland and in South Greenland and renewable energy in East Iceland. Based on those cases, we identify and discuss four types of tensions: (1) those between the formal requirements of the ESIA process and the expectations of stakeholders for the consultations; (2) those between the interests of proponents in regard to ESIA and those of affected stakeholders; (3) those between decisions taken at the national level by the government and the need for participation and empowerment at the local level; and (4) those between the timing of the formal procedure for input and the need for local communities to engage when it makes sense to them in the process.

The rest of the chapter proceeds as follows: First, we frame the issue conceptually, then present the cases and methodology. Following this, we present results on the four types of tensions; proceed to discussing the findings; and finally, and conclude with some recommendations for stakeholder engagement.

### **Framing the Issue**

This section explains two key issues framing the analysis: meaningful stakeholder engagement and ESIA requirements and legislation.

### ***Meaningful Stakeholder Engagement***

Focused on identifying and managing harmful impacts resulting from mining, construction, production, or other business activities, meaningful stakeholder engagement (MSE) draws on a combination of theoretical and applied knowledge areas (e.g., impact assessment, business and human rights, and stakeholder theory). As noted in the Introduction to this volume, according to Freeman’s (1984) definition, *stakeholders* comprise any group or individual who can affect, or is affected by, the attainment of an organization’s objectives. As also explained in the Introduction to this volume, MSE is focused on those who can be affected, typically

adversely, and aims at addressing harm from the perspective of those at risk. This presupposes a dialogue that actively involves those affected by an activity and engagement that goes beyond the formal limits of consultation as processes required by law. The practice of consultation for the purpose of ESIA is often regulated by law, typically in environmental, social, or other ESIA legislation in various forms and levels in diverse countries but with considerable variety across individual jurisdictions and, therefore, countries (Nenasheva et al., 2015; Glucker et al., 2013; O'Faircheallaigh, 2010).

Recent years' emphasis on stakeholder engagement being *meaningful* can be traced to international soft law related to corporate responsibilities to respect human rights and responsible business conduct in a wider sense, not limited to human rights impacts (Buhmann et al., 2021), as well as the incorporation of MSE as an element in the exercise of risk-based due diligence. Meaningful engagement of stakeholders whose livelihoods, lands, jobs, health, access to education, or other human rights are or may be adversely affected by a project is firmly grounded in the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs), which emphasize such stakeholder engagement as part of the due diligence process to identify and manage risks and harmful impacts. The practical implications are an emergent subject of impact assessment research (Götzmann, 2019). As observed in the Introduction chapter, it is clear, from the textual context set out in the UNGPs and various texts elaborating the due diligence process, that while engagement with stakeholders in general is encouraged, the particular focus is on actually or potentially affected stakeholders. MSE entails rights for such stakeholders to be involved so that impact assessment identifies *their* interests, needs, and concerns from *their* perspectives. The idea that involvement of affected stakeholders should be meaningful can also be said to be in line with general environmental and social impact assessment theory (Owen & Kemp, 2014; Esteves et al., 2012; IAIA, 1999) which argues that the process should be participatory.

### ***SIA Requirements and Legislation***

In the Arctic, ESIA is generally governed by legislation and by-laws (Nenasheva et al., 2015), establishing procedures for the process. Despite differences across jurisdictions and adjustments to local values and practices, these generally follow the same basic principles and steps (see for example, Hansen et al., 2018; Koivurova & Lesser, 2016).

#### *Greenland*

In Greenland, environmental and social impacts of projects related to mineral exploitation (which is the focus of the Greenlandic cases addressed here) is a requirement of the Mineral Resources Act (MRA) (Inatsisartut, 2009). Chapter 15 in the MRA stipulates that exploitation of hydrocarbons and minerals as well as specific activities connected to this (for example harvesting energy for the activities) can only take place after an EIA has been conducted. Further, the legislation states that other activities covered by the legislation should be subject to an EIA if they can be assumed to have significant environmental impacts. The aims of the EIA process concerning mineral extraction in Greenland include (Mineral Resources Authority, 2015, p. 4):

- To estimate and describe the nature and the environment as well as the possible environmental impacts of the proposed project
- To provide a basis for the consideration of the proposed project for Naalakkersuisut (the Government of Greenland)

- To provide a basis for public participation in the decision-making process
- To give the authorities all information necessary to determine the conditions of permission and approval of a proposed project.

According to the MRA, a project's proponent (for example, the organization or person proposing the project and applying for a permit) has the responsibility to undertake the EIA, under the supervision of the Mineral Resources Authority. The MRA stipulates a 35-day consultation period for the scoping report and the Terms of Reference for the EIA, also requiring that the proponent must evaluate the comments received and adjust the project. A draft EIA produced as part of the application for mineral exploitation is to be published by the Mineral Resource Authority for a minimum of eight weeks of consultation. During this consultation period, public meetings must be conducted in the towns and settlements 'particularly affected by the activities' (Mineral Resources Authority, 2015, p. 6). Following the consultation, the proponent must prepare a white paper responding to all the comments received both in writing and at meetings.

Greenland has also introduced detailed requirements for social impact assessment (SIA) of projects which the government expects will have significant social impacts (Inatsisartut, 2009). The SIA Guidelines (Naalakkersuisut, 2016) require the company requesting a license to undertake the assessment, in a process that assumes close cooperation with local authorities and stakeholders. The objectives of the SIA process for a mineral project in Greenland include the following (Naalakkersuisut, 2016, p. 6):

- to provide a satisfactory and impartial description for Greenlandic society in general about what Greenland and affected local communities and individuals will gain from the project
- to inform and involve relevant and affected individuals and stakeholders early on in the process via ongoing dialogue and specific procedures, for example through information and consultation meetings as well as relevant media
- to optimize positive impacts and mitigate negative impacts throughout the project lifetime and through this ensure sustainable development
- in a meaningful manner to involve affected towns, settlements, and communities (individuals) that may be directly or indirectly impacted throughout the project by utilizing and respecting local knowledge, experience, culture, and values

Public participation and involvement are expected throughout the steps of the assessment process. Companies are expected to organize stakeholder meetings, information meetings, and other citizen-oriented meetings. Authorities host public consultation meetings after consultation material has been published and submitted for public consultation on the government's website. Those meetings may be complemented by other types of meetings and methods, including the use of social media. If the government deems it necessary, the process results in the negotiation of an Impact Benefit Agreement (IBA) between the government, the municipality, and the proponent of the project (Naalakkersuisut, 2016; Inatsisartut, 2009).

### *Iceland*

Iceland's EIA Act forms part of a larger complex of planning legislation. Since 2000, this has included the European Union's (EU) EIA legislation (Koivurova and Lesser, 2016). Iceland is

not a member of the EU, but as a member of the European Economic Area (EEA), Iceland must implement certain EU legislation. This pertains, inter alia, to the environmental area, and, therefore, the EU's EIA legislation.

While the National Planning Agency (NPA) has overall responsibility for the EIA process, the proponent is responsible for undertaking the assessment and bearing the costs (Government of Iceland, 2000). Projects requiring an EIA include dams and other alterations of waterways, resulting in land being flooded above a certain area, hydroelectric power stations (100+ kW), and industrial plants for melting or re-melting of metals (ibid., Annex 1-2). The objectives stipulated by the EIA Act include (Government of Iceland, 2000, article 1):

- to promote cooperation of stakeholders and concerned parties with regard to projects subject to the provisions of the EI Act
- to make known to the public the environmental impact of projects subject to the provisions of the EIA Act, mitigating measures to deal with them, and to give the public the opportunity to comment and contribute information before the National Planning Agency's opinion on environmental impact assessment of a project is issued

The NPA is required to inform the public about their decision on the screening of a project. The proponent must include a plan for making information available and for public consultation in the scoping document and make the document known to stakeholders to be consulted and to the general public (Government of Iceland, 2000). The public must be allowed at least two weeks to comment on the draft scoping document. The proponent may hold a meeting to present the scoping document. When the proponent has submitted a draft ESIA report, and the NPA subsequently has determined that the report meets the criteria of the EIA legislation and the scoping document, the proponent and the NPA release the ESIA report. Then follows a six-week consultation period, allowing the public to provide written comments to the NPA. The final ESIA report must include information about the comments made on the scoping document and the ESIA report during the process (Koivurova and Lesser, 2016).

### *Responsibilities for ESIA*

As in the case of Greenland and Iceland, impact assessments are typically required by authorities, such as environmental agencies, who are charged with overseeing and protecting the social good(s) in question, e.g., land, water, and/or public health. However, the assessment is often undertaken by the company or another organization that requests the permission for the activity under assessment. It may appear counterintuitive to ask the organization with a vested interest in the (positive) outcome of the assessment to undertake it; however, this is common practice in multiple jurisdictions. The approach of the EU Directive on EIA illustrates a common distribution of roles of key actors. The proponent applying for an EIA permit is responsible for both providing information needed by the authority to carry out a screening and for preparing the EIA report and carrying out the required consultation. Throughout, the relevant public authority is responsible for reviewing the information and assessments supplied by the proponent, examining the EIA report, making a decision on the project, and, if necessary, setting conditions. This distribution of responsibility was set out by the EU as a way to improve the quality of information and analysis of the EIA (European Commission, 2012; Commission of the European Communities, 2009).



### *The Nature and Use of ESIA Legislation*

ESIA legislation requires impact assessment to be undertaken by proponents and/or governments. Listing what we refer to as formal requirements, such texts typically specify that the completion of an environmental and/or social impact assessment, along with an administrative authority's approval, is a condition for the granting of a license (see, e.g., the Greenlandic Raw Materials Act). Laws (statutes) are normally kept short and to the point in terms of fundamental issues. Details may be provided in by-laws or guidelines. They may also emerge from the legislative history. Studying the legislative history is part of the recognized legal method in Nordic countries to identify details on the objectives of a law, in case it is not clear in the text of the law. Therefore, studying the legislative history is commonly done by lawyers, while it is not expected of those who apply the law, such as professionals charged with the specific tasks of an ESIA. For them, ideally the text of the law should be clear regarding what should be done by whom. At the same time, those who only read the text of a law may miss the more intricate information informing the legislation or details on the purpose and aims. Further details are often provided in detailed by-laws or guidelines complementing statutory requirements. For example, the Social Impact Assessment (SIA) Guidelines issued by the Government of Greenland (2016) complement the MRA and provide a much higher level of detail, including on purpose of consultation. Quite detailed, the Greenlandic SIA Guidelines note that 'a consultation has several purposes, but is mainly to ensure meaningful involvement early on in the process' (p. 12); that the purpose of the white paper (which is to be produced by the company) is to address relevant consultation statements and comments on the project which have emerged during the consultation phases (p. 17); and that the purpose of the Impact Benefit Agreement is to safeguard Greenlandic interests and social commitment from the parties involved throughout (p. 20).

### **Cases and Methodology**

The chapter recounts and reflects on experiences drawn from three cases in the Arctic: South Greenland, East Greenland, and East Iceland. Fieldwork was conducted in South Greenland in August 2018, in East Iceland in December 2021, and in East Greenland in May 2022, involving a number of locally based stakeholders from various organizations as well as individuals.

### *Case Descriptions*

In South Greenland, the focus was on experiences of consultation in mining projects. Two projects in the area were at the exploration stage awaiting final exploitation permission at the time of the fieldwork. The first of these concerned Kuannersuit, a proposed mining project just outside the town of Narsaq. At the time, the proposed mine was projected to produce a concentrate of REE as well as a by-product of uranium. The project has since been put on hold in consequence of a new policy adopted in 2021 by the Parliament of Greenland to no longer allow uranium exploitation. At the time of the fieldwork, an EIA was under preparation, and consultations had been carried out. The second project concerned Killavaat Alannuat, a proposed mining project aiming at producing concentrates of various minerals and REEs. At the time of the fieldwork, an EIA, including consultations, had been carried out but was awaiting approval.

South Greenland is rich in REEs, resulting in potential economic opportunities for the green transition, provided the global price level balances exploitation costs as well as transport for processing elsewhere, in the absence of processing facilities in Greenland. The Kuannersuit deposit also holds 10% uranium, considered a by-product of the transition minerals mining (Hansen and Johnstone, 2019; Environmental Justice Atlas, 2019). The mine was seen to have potential for indirect local job generation. On the other hand, fear of uranium contamination of sheep, grass, creeks/rivers etc. caused local sheep farmers and tourism providers to be concerned about harmful health impacts as well as related economic loss. Due to its size, demand for mine workers was expected to be so high (around 400 trained people) that it far exceeded Greenlandic existing capacity as well as what could feasibly be training within a relatively short time span. On a much smaller scale, the Killavaat Alannuat would require around 40 skilled mine workers and was therefore seen to hold reasonable potential for training of Greenlandic staff, thereby contributing to local capacity. Moreover, the Killavaat Alannuat site has much smaller radioactive material ratios than Kuannersuit.

In East Greenland, the focus was more broadly on economic development, including the possibilities for mining and tourism around Tasiilaq, the major town in East Greenland, and neighboring settlements. The focus was on general consultation in relation to development, for which mining offers an interesting economic potential due to the rich deposits of REE and transition minerals in East Greenland. The topic arose on several occasions, including in conversations with local hunters who earn their living hunting seals, whales, and other large mammals, in accordance with Greenlandic tradition. Based on resource mapping, potential mining projects are likely to be located in areas that are key for hunters.

In East Iceland, the focus was on a hydropower project, namely the Kárahnjúkar dam and power plant, where six turbines located in the Valthjofsstadur mountain produce 4800 GWh/year. The electricity produced mainly supplies an aluminum smelter located in the nearby Raydarfjörður. Construction of the facility started in 2003. The power station reached full capacity in 2007 and was thus fully operational at the time of the fieldwork (Landsvirkjun, n.d.). An EIA report for the project was delivered in 2001 and at first rejected by the NPA. This decision was repealed by the Minister of Environment who approved the project, subject to 20 environmental conditions, in December 2001.

The Kárahnjúkar dam project was controversial from the outset (Benediktsson, 2016; Newson, 2010). Concerns arose as the dam would cause flooding in an area that was until then a large wilderness, covering around 1,000 square kilometers that served as important feeding and resting areas for birds, as well as a recreational area, also for city-dwellers. Moreover, workers were mainly expected to be foreign, and the energy produced by the dam was primarily intended for an aluminum plant, run by the transnational company Alcoa and with production intended for export. In addition to the dam, the fieldwork touched on current green energy project plans, in particular for wind turbine projects.

### ***Methods for Data Collection Fieldwork***

The fieldwork informing this chapter comprised mainly semi-structured interviews with a diverse range of stakeholders. The respondents interviewed all represent individuals with formal or informal networks with wider groups of stakeholders. This approach was chosen to enable us to obtain views that represented a larger group of stakeholders or interests during limited bouts of time. Most of the respondents were identified with the help of local partners working with the research team. This approach was adopted to identify relevant respondents

Table 7.1 Interviews with locally based stakeholders

<i>South Greenland</i>	
<i>Date</i>	<i>Stakeholders (respondents)</i>
August 2018	Sheep farmers, mining company representative, local politician, local authorities. (Total respondents = 13)
<i>East Greenland</i>	
<i>Date</i>	<i>Stakeholders (respondents)</i>
April–May 2022	School teacher, consultant, two tourism operators, business owner, local hunters, local politician, local authorities. (Total respondents = 13)
<i>East Iceland</i>	
<i>Date</i>	<i>Stakeholders (respondents)</i>
December 2021	Representative from utility, representatives from regional development office, researcher, lawyer, local politician. (Total respondents = 7)

and gain access. Additional respondents were identified by the use of ‘snow-ball sampling’, where interviewees were asked to identify other relevant stakeholders (see, e.g., Harris et al., 2018; Atkinson & Flint, 2001). This approach was taken based on an assumption that the local respondents know their community better than the research team and thus are qualified to point to central people. The interviews drawn upon from each case are listed in Table 7.1.

The respondents are members of small communities, as small as 30 inhabitants, and potentially easily recognizable. At the same time, some of the projects are conflictual, and the dynamics in the communities are complex. Thus, it is important to protect the anonymity of respondents, meaning that names and detailed affiliations are withheld. Generally, due to the small communities in question, a limited degree of details can be given about the interviews without compromising anonymity. Also, in the text, no direct references are made to the respondents; this is also meant to protect the anonymity of the respondents. The small size of the communities is also reflected in the number of respondents.

Supplementing the interviews, the project team has used urban drifting as a method to get acquainted with the local settings as much as possible during the relatively short fieldwork. Drifting is used as a method to explore the physical and socio-economic context in a local area and obtain an understanding of how inhabitants use the local community. Drifting involves non-participatory, unstructured observation (see, e.g., Daniilidis, 2016).

Based on the data and experiences from fieldwork coupled with knowledge of the framing issues above, four tensions emerged as a form of hypothesis. These were then used to analyze the interviews to see whether and how the data supported the tensions. In the following section, the case study data, literature, and information noted above are applied to explore the tensions in an abductive process.

### **Exploring Tensions**

Analysis within the framing explained above indicates a clash between ESIA objectives and community experiences. This suggests the existence of tensions that challenge the effectiveness

of the ESIA process in regard to meeting the objective of substantial participation by potentially or actually affected stakeholders. Our data suggest four tensions, listed here and elaborated below:

- 1 a tension between, on the one hand, the formal requirements of the ESIA process as well as the expectations of stakeholders about consultations, including that it should provide stakeholders with a say, and, on the other hand, the experiences of stakeholders regarding actual involvement (the level of engagement).
- 2 a tension between the perceived intentions of project proponents and authorities in ESIA and the interests of affected stakeholders.
- 3 a tension between decisions being taken at a national level by central government and administration and the need for engagement at the local level.
- 4 a tension between the timing of the formal procedure, with regard to the stage when the ESIA process opens up for input, and the need for local communities to engage in the process, when it is meaningful for them, rather than during limited time slots decided by authorities or proponents.

The following sections consist of an exploration of each tension based on the fieldwork and (to a lesser extent) the literature.

### ***Tensions between Formal Requirements and Affected Stakeholders' Experiences of Consultation***

As observed above in the framing section, legislation needs to be to the point regarding tasks to be undertaken by actors involved. However, this also means that legislative texts rarely explain the underlying objectives for public involvement through consultations and other IA processes, including meaningful engagement with (potentially) affected stakeholders. At the same time, IA practitioners, who are frequently not lawyers but trained in engineering or technical disciplines, cannot necessarily be expected to have insight into the underlying background of the legislation nor the legal method applied to identify such background information. As explained in this book's Chapter 1 (Buhmann et al., 2024), underlying objectives for IA processes include the identification of the specific interests and concerns of people who may be affected by the project. This may concern their livelihoods, income, or general human rights as well as any pre-existing issues such as historical conflicts that may have an effect on the perceptions of project impacts. At the same time, information gained through our case studies indicate that wider communication about consultation frequently raises expectations among local communities and other (potentially) affected people precisely on accommodation of such interests and for them to have influence on the project and impacts. Stakeholders may also have expectations of a consultation being planned to build trust, take time, and generally establish a two-way dialogue. This has been shown in various studies (see Introduction to this volume) to be closely associated with a meaningful process.

These issues may result in a tension between, on the one hand, the formal and somewhat technical provisions on consultations and other forms of public participation as part of an IA, and, on the other hand, expectations among affected stakeholders for a stakeholder engagement process that is meaningful from their perspective in regard to process as well as outcome. Our observations confirm those of the Arctic Council Sustainable Development

Working Group on ESIA in the Arctic (Karvinen and Rantakallio, 2019), which has also noted the need to tailor a process to the local community.

In East Greenland, respondents called for decision-makers and planners to visit the local communities, develop a real dialogue with locals, and take the time to understand their conditions, including in regard to their livelihoods and professions. They suggested that those who undertake ESIA should not only organize formal meetings, which typically have a short duration and take place in the local community meeting hall or similar space and moreover often fail to obtain a sincere dialogue. Rather, decision-makers and planners should arrive early, take the time to meet people in other public spaces (e.g., the shared laundry), talk to individuals, explain the project, and try to understand the situation from the local perspective. This should not supplant the consultation meeting but could serve as preparation on both sides and would help local people understand the issue, prepare for the consultation, and understand why they should prioritize attending the consultation and share their views and concerns. In this regard, the regional development office in East Iceland reported good experience of starting a consultation process for community development early and shaping it as a continuous process of engagement with the local community; that is, “not just a box you should tick”. They strive to ensure that local communities are provided with detailed information on the project and to listen and work with them on analyzing and discussing risks and losses as well as identifying possible gains.

On a more critical note, respondents in East Iceland observed that limited response from authorities to consultation comments and limited evidence of uptake in revised project plans is potentially detrimental both to the public trust in consultations and to the interest in taking part in the latter. This experience is related in particular to digitalized consultation processes, which have become common in recent years in Iceland. On the one hand, these have the potential to be accessible to many people; on the other hand, the process of communicating becomes anonymous with no recipient visible, perhaps an automated confirmation of receipt, and no further response from the authorities. Aligning expectations was noted to be important: a consultation is a right to have one’s say but not a right to have one’s way. This should be clearly explained by the authorities and others who organize, plan, and carry out consultations. If expectations are not aligned, disappointment with the outcomes can lead people to not want to spend energy and resources on participating in the future. The pertinence of stakeholder frustrations with seeing their comments reflected in subsequent ESIA reports is evident in Dahl and Hansen (2019)’s findings that for three mining projects in Greenland, 13% of the written responses led to changes in the ESIA reports.

During our research in East Iceland, one respondent noted that while ESIA is ideally a platform for framing dialogue, at least in the Icelandic context, the real dialogue takes place in smaller groups, for example in the municipal council or through citizens directly communicating with and influencing local and national politicians. According to Icelandic respondents, ESIA frequently becomes very polarized because people think it is a way to stop a project. In that case, ESIA becomes a framework for conflict rather than conversation. This may lead some people to prioritize approaching their politicians directly instead of taking part in the ESIA consultations. At the level of principle, similar experiences on approaching politicians were expressed by stakeholders in East Greenland, which, like Iceland, is a close-knit community where local people know their local politicians. However, as noted below, there were also expressions of mixed experience of local politicians being accessible and present in the local area.

Another respondent from Iceland noted that the general public often does not understand the system well and that it is difficult for them to distinguish the stages and progression of the process. It does not explain itself well. Some of this may be a result of the wording and structure of the legislation and lay peoples' understanding distinctions between key terms that relate to different stages in the process. It was observed that, in fact, the ESIA process aims at bringing out conflicts early on, so that they do not appear halfway through the process but, rather, can be addressed by adjustments or other steps before the final project plans are finalized, potentially adopted, and implemented.

***Tensions between the Perceived Intentions in ESIA from Project Proponents and Interests of Local Stakeholders***

In the case of East Iceland, it became especially clear that issues of trust and mistrust were at play. Expectations and ideas of the ESIA process and what it should achieve were major issues. Specifically, the tension is between, on the one hand, the intentions (or perceived intentions) of the developer proposing a project or the authorities and, on the other, the interests of the local communities and their interests when getting involved in the ESIA process.

Several respondents in East Iceland had experienced this at first hand, in a role that involved collaboration with stakeholders in the local community who were consulted for their input and views on a possible project development. The community stakeholders were very skeptical of the project. It took some explanation and persuasion to convince them that local authorities, advisers, and politicians were genuine in their interest in input and that decisions regarding the project development had not already been made. One respondent observed that a proponent or authority should not "come to a town meeting and tell people what is going to happen – you should be prepared to listen".

In East Greenland, a similar tension was indicated by a respondent stating that members of the local community will participate if they perceive it to be of interest to them, but not if they sense that the decision has already been made. The respondent explained that skepticism is a result of previous experiences that much has been promised in decision-making processes, but little has happened. This causes a sense of distrust concerning the intentions of the proponents and authorities. Somewhat similar observations were made by respondents in South Greenland, referring to a 'disillusioned' local community.

In the experience of a respondent in Iceland, stakeholders, including the general public, often consider the impact assessment system as a formality and treat it as such – as "something you should go through, not something you should use". However, he also underscored that the system is in fact made for the sake of citizens to protect, preserve, and promote their interests: "If you understand the system and do not treat it as a formality but use it, it can be substantively meaningful and influential." This could, however, be impeded by the ESIA professionals not necessarily knowing the detailed background and objectives of the legislation, as discussed above in the framing section.

It was observed that consultation processes may genuinely affect the views of local politicians, and that stakeholders taking part in a consultation should be aware that their views may play a role in this regard. This should, ideally, make it worthwhile to invest time in the consultation. In practice, however, respondents among politicians and authorities felt that community expectations of politicians and other decision-makers not being willing to change their minds in ESIA and decision-making processes can be a barrier to the consultation.

### ***Tensions between Decision-making Levels and Local Level Engagement***

Both East Iceland and East Greenland are relatively isolated places, far from decision-makers located in the capital cities.

For the Karahnjúkar dam in East Iceland, decisions on the project were taken in the capital city Reykjavik in the West of Iceland, by the minister of Environment. According to one respondent, it was indeed very governmentally driven. Local people in East Iceland felt that in addition to political priorities, the habits or leisure time priorities of the urban elite in Reykjavik also played a role regarding decisions on the use of the Icelandic wilderness. There was a sense that locations outside Reykjavik were subject to the political decisions, for example regarding potential green energy projects, such as wind farms (partly for energy export purposes), and, at the same time, subject to priorities for the urban elite to preserve the wilderness for recreational purposes.

In East Greenland, distances are extreme: whether decisions are at the national or local level, they are taken in West Greenland, in Nuuk, which is both the capital city and the main city of Sermersooq Municipality that includes Tasiilaq and nearby settlements. The distance between Tasiilaq and Nuuk is around 800 km across the inland ice, with no option to travel by road and flights only a couple of times a week to the nearby settlement of Kulusuk, followed by a helicopter ride or a boat trip to Tasiilaq. These conditions can contribute to a feeling of being isolated and overlooked by decision-makers placed in Nuuk. One respondent from East Greenland framed it as a lack of belief, from the national and municipal government, banks etc., in the area and its capacity for development. It was felt that, for this reason, development is not prioritized. As examples of development lacking behind West Greenland, respondents mentioned issues such as poor housing and infrastructure, including slow internet connections, as well as infrequent and unstable flight connections. Singular incidents may reinforce the perception of being overlooked by the central authorities and proponents. In East Greenland, the fact that local people had not been informed of a field visit by the mining company to a potential new mine site caused concerns in the local community. Local hunters were discontented that they had not been asked about their views and concerns, even though such a project could impact hunting. The absence of prior notice may have been just a mistake made by the relevant authorities but, nevertheless, contributes to distrust among the local people.

In the case in East Iceland, the importance of local politicians being present in the local community as a bridge between the local community and local or central-level decision-makers was emphasized. Respondents observed that members of the local community having access to local politicians, asking them questions and influencing them, was a way for the community to get a sense of meaningful engagement in the process. Possibly related to the vast distances in Greenland, in East Greenland, there is a somewhat different experience, at least for one respondent who noted that he did not feel that local politicians listen and that it is difficult to get in touch with them. A key issue is that politicians do not stay for very long in the smaller isolated communities: “If they come, they may have a meeting in the town hall, and immediately after that, they leave again”.

### ***Timing of Formal Procedure vs. Needs of Stakeholders to Engage***

A tension brought forward by respondents in South Greenland relates to the timing of consultations convenient for the EIA process and proponent versus what is convenient and

feasible for members of the local community. The respondents observed that consultation meetings taking place in Narsaq had been planned without regard to tasks related to the sheep farmers' profession and local customs. Because meetings took place in Narsaq, the sheep farmers needed to spend several hours traveling there, either in their own boats or on commercial transit boats. This meant spending considerable time away from tending to the sheep, for example at the time when the lambs were born. This is an important time for sheep farmers since they need to be around the sheep to help in case of an emergency. Moreover, the consultations were planned at times that coincided with weddings or confirmations, a religious event where families and friends gather to celebrate young people.

Another tension concerning timing relates to the staging of discussions of the project and its elements. Respondents from East Iceland pointed to the need to discuss and engage even before the ESIA process because important decisions may already have been made by the time that the ESIA is launched. One respondent explained that people do not know what EIA is and suggested that in order to engage in the process and make use of it to gain information and share their views, they should be given information in advance. Thus, some of the discussions related to local stakeholders' concerns and interests should take place at early or pre-planning stages, rather than when the project has been conceived and described. In East and South Greenland, respondents pointed to the need for strategic discussion of development directions, e.g., whether mining or tourism should be prioritized. One respondent argued that tourism could be a valid alternative to mining, allowing people to have or get a job doing what they know (e.g., dog sledding) rather than to be retrained to work for a mine. This also points to the importance of early engagement even at pre-project planning stages in order to discuss priorities and development pathways. Furthermore, it indicates that local communities may find engagement in pre-project stages meaningful, seeing it as an opportunity to shape the direction of wider decisions for the area, as opposed to consultations on projects that are already fairly advanced and may be seen as a foregone conclusion.

### **Discussion and Conclusion**

Based on interviews in East Iceland and South and East Greenland, this chapter has explored four tensions which we argue are at play in ESIA processes. We have explored the tensions and their implications for affected stakeholders in ESIA processes as an opportunity to engage meaningfully in decision-making processes. Across the four tensions, a series of insights emerge that can help inform ESIA processes towards a higher degree of stakeholder engagement experienced to be meaningful, especially by affected stakeholders. The tensions in various ways relate to the objective of ESIA to provide stakeholders with information that enables them to understand the issues at stake and to plan and undertake the ESIA in such a way that affected stakeholders are and can be engaged in the decision-making process.

The first tension is between the formal requirements for engagement in the ESIA process and the expectations of stakeholders. Our research indicates that affected stakeholders in local communities are concerned that ESIA processes may be conducted as compliance tasks required by law without adequate regard to the underlying objective of engaging stakeholders in the decision-making process and helping inform the decisions to be made. To undertake ESIA in a way that is perceived by affected stakeholders as being a sincere effort to learn about their views, authorities and project proponents or developers should not just organize formal meetings in town halls or similar official spaces. Rather, they should spend ample time with affected communities and meet them in spaces where everyday conversations may take



place. That will enable authorities or proponents to provide affected stakeholders and communities with background information for them to understand a (proposed) project and its impacts. Echoing the recommendation of the Arctic Council on engagement in EIA processes (Karvinen and Rantakallio, 2019), our field studies confirm the importance of the proponent or authorities undertaking the ESIA to take time to get to know a community and not just have a one-off public meeting, with community involvement starting at the early stages of the planning stage and being tailored to the specific community. However, the perception that the current formal engagement procedures are not necessarily delivering meaningful engagement is echoed from other stakeholders. In a survey among impact assessment researchers, a majority of respondents agreed or strongly agreed that ‘EIA procedures present difficulties in ensuring adequate and useful public involvement (or participation)’ (Nita et al., 2022, p. 4).

As for the second tension, between the intentions of proponents and authorities in regard to ESIA and the interests of affected stakeholders, our interviews suggest that the actual intentions behind an ESIA or the underlying project are frequently unclear to affected stakeholders. There may be conceptions that authorities or proponents have other intentions than wanting to learn the views and concerns of affected stakeholders. Decision on a project can be perceived to be a foregone conclusion, rendering the stakeholder’s investment of time in a consultation or writing responses meaningless. In the previously mentioned survey, a vast majority of participating researchers agreed or strongly agreed that a shortcoming of EIA is that ‘some major decisions are being made even before EIAs are completed’. This points towards a recognition of the concern of stakeholders and is thus part of the backdrop for the tension (Nita et al., 2022, p. 4). On the other hand, the respondents also point to one of the benefits of EIA being that ‘public opinion is considered when making a decision’ (Nita et al., 2022, p. 4). In any case, our interviews underscore the importance of authorities and proponents being clear and honest about the purpose of engagement and the reality of possibilities for influence and options for change. Such changes of views can be seen as signs that stakeholders’ contributions help shape the decision to be made.

Third, we looked at a tension between decisions taken at the national level by the government and the need for engagement at the local level. Our interviews indicate that affected stakeholders geographically distanced from decision-makers located in capital or mayoral cities may perceive a project and a decision to be predominantly shaped by the worldviews of the latter. Although there are no quick fixes to this problem, here too, a process which makes it clear that local stakeholders’ views are actively sought after and considered may go some way towards addressing the tension.

Finally, we considered tensions between the timing of the formal procedure for input and the need for local communities to engage at the times in the process when it makes sense and is feasible for them. If ESIA process steps involving affected stakeholders are scheduled at times that work poorly for them, the entire process may easily be perceived as not being sincere. Implicitly, the understanding and interpretation may be as follows: If planning does not take seriously the professional tasks (e.g., assisting livestock during the lambing season), working hours, or local cultural customs, then why should views that emerge from the consultation process be taken seriously? Scheduling ESIA engagement activities in a way that respects other commitments of stakeholders serves to help communicate the sincerity of the proponent and authorities and therefore the quality of the entire ESIA process. It has been pointed out, e.g., by Hansen and Johnstone (2019) that impacts from development projects, specifically mining in the Arctic, begin early in a planning process and before impact assessment processes. This underlines the issue also raised in this paper of whether impact

assessment and stakeholder consultation focused on projects on the whole take place early enough in the planning process or whether a more strategic level should be addressed. Other studies, however, point to the opposite practice, where resolving contentious issues are postponed to post-decision stages and not yet established working groups (Bernauer et al., 2023). This all emphasizes the tension between formal engagement taking place and decisions actually being made and the need to align these two.

Overall, the tensions draw attention to the point that those who undertake ESIA must be mindful of the underlying objectives of the ESIA process and consider how to design a process that reaches those. This entails among other things considering how an ESIA process should be organized and implemented to fulfill the objective of giving affected stakeholders opportunities for meaningful engagement. Previous studies have pointed such a tailoring of ESIA to the individual decision-making process as being an unsolved problem (see, e.g., Kørnøv & Brown, 2011; Lyhne et al., 2021). This includes spending time in affected areas with (potentially) affected communities; securing clarity on the purpose of the ESIA process and on the intentions of those who plan and implement it; providing clarity on potential divergent interests between different groups including when there is considerable geographical distance between affected people and decision-makers; and scheduling activities and timelines that respect and fit the commitments of affected stakeholders.

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# 8

## A FAILURE OF PRAXIS

### The Application of Free, Prior and Informed Consent (FPIC) in the Australian Resources Sector

*Matthew Storey*

#### **Prologue – Meaningful Stakeholder Engagement and Indigenous Peoples**

Consideration of the issue of the application of the principle of Free Prior and Informed Consent (FPIC) to resources sector projects affecting Australian Indigenous Peoples in the context of meaningful stakeholder engagement (MSE) requires some preliminary consideration of the notion of MSE. Two matters are raised; one going to definition, the other to perspective.

As to the definition issue, in the introduction to this volume the editors explore the “concept” of MSE. A significant distinction is drawn between two groups of stakeholders. The first satisfies the classical business theory definition of those “who can affect achievement of the organisation’s objectives”. The second are “affected stakeholders” – those whose rights and livelihoods are at (potential) risk from projects undertaken by others. The editors point out in the introductory chapter of this handbook that MSE is more focused on *affected stakeholders* due to their particular vulnerabilities. The inclusion of Indigenous Peoples within the term affected stakeholder is (at least in Australia) frequently viewed as disrespectful by Indigenous Peoples.

This sentiment arises because the term “affected stakeholder” is apt to include, for example, recreational fishers or weekend users of national parks. Both these groups have a “right” (indeed, a legally enforceable right) to use these natural resources. Similarly, a worker whose working environment or remuneration may be affected by a project is properly considered an “affected stakeholder”. The term “affected stakeholder” thus equates an Indigenous People with an everlasting and spiritual connection to place; a connection that stretches over countless generations and millennia; through centuries of attempted colonial genocide with a voluntary recreational environmental user or an individual who chooses to take employment at a particular time in a particular location. For this reason, as the editors correctly note “the term ‘stakeholders’ is contentious with some rights-holders, in particular some Indigenous groups.”

The second point goes to perspective. The perspective of MSE is that of the proponent of a project. As identified above, an affected stakeholder is “one at (potential) risk from a project undertaken *by others*” (emphasis added). The introduction succinctly explores the significant

distinction in approach and outcome between top-down and bottom-up approaches to MSE. However, it is inescapable that, at its core, MSE is “engagement with affected stakeholders as part of the risk-based due diligence process”. MSE is something done by proponents to “stakeholders” in order to minimize the “risk” to proponents. The implication is that, if not disempowering of itself, MSE is a component of a process of disempowerment that perceives the potential infringement of the rights of Indigenous Peoples as a “risk” to be “managed”. Perceived in this light, MSE is simply the most recent manifestation of colonial expropriation.

However, this contribution is a practice note, not an exploration of MSE theory. In practice, corporations and governments with the wealth and resources obtained over history will often (but not always) be the proponent of activities on Indigenous lands. In practice, MSE can provide the process by which corporations and governments can genuinely acknowledge and give real effect to the fundamental rights and interests of Indigenous Peoples, especially those rights articulated in the United Nations Declaration of the Rights on Indigenous Peoples (UNDRIP) (United Nations, 2007). The purpose of this note is to examine whether the potential offered by MSE is in practice fulfilled.

### **Introduction – A Wealth of Authority**

Meaningful stakeholder engagement clearly requires that the actions of a business enterprise comply with contemporary international legal norms and expectations. Foremost amongst these norms and expectations would be the proposition that multinational enterprises, particularly those headquartered in first world countries, should conduct their operations to always give effect to fundamental human rights norms. This proposition would seem unremarkable today.

The proposition would seem even less remarkable in the context of corporations engaged in the mineral resources industry. This is an industry which is particularly exposed to, and dependent upon, public goodwill in its extraction of public resources.

Any number of authoritative statements of international legal principle and industry standards could be cited in support of the proposition above. That list of authority would legitimately start with the *UN Guiding Principles on Business and Human Rights* (United Nations Human Rights Committee, 2011) (UNGPR) but would also extend to include the *Guidelines for Multinational Enterprises* (Organisation for Economic Cooperation and Development, 2011), the International Finance Corporation’s *Performance Standards on Environmental and Social Sustainability* (International Finance Corporation, 2012) and the *Equator Principles 4* (Equator Principles Association, 2020).

In the specific context of Indigenous Peoples, reference in support of the proposition could be had to the UN Food and Agriculture Organisation’s *Free Prior and Informed Consent – Manual for Project Practitioners* (United Nations Food and Agriculture Organisation, 2016), the (somewhat contentious) World Bank Group, *Operational Manual*, BP 4.10 (World Bank Group, 2005), the UN Global Compact’s *Business Reference Guide to implementing the United Nations Declaration on the Rights of Indigenous Peoples* (United Nations Global Compact on Business and Human Rights Network, 2013) and the UN (Department of Economic and Social Affairs) *Resource Kit on Indigenous Peoples Issues* (United Nations, Department of Economic and Social Affairs, 2008).

In the particular instance of the interaction of the mineral resources industry with Indigenous Peoples the proposition that meaningful stakeholder engagement requires that the actions of a business enterprise should conduct their operations to always give effect to

fundamental human rights norms is also supported by ample specific authority in addition to that found in the more general documents identified above. For example, one may look to the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (Organisation for Economic Cooperation and Development, 2017) and the International Council on Mining and Metals (ICMM) Position Statement on Indigenous Peoples and Mining (International Council on Mining and Metals, 2013). At a national level also, documents such as *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canadian Extractive Sector Abroad* (Global Affairs Canada, 2014) support the proposition as discussed in greater detail by Seck (Seck, 2016). Authority for the proposition is found even at an enterprise level, for example the Rio Tinto publication: *Why Agreements Matter* (Everingham et al., 2016).

The synthesis of all this authority can be fairly summarized in the following passage from the UNGP (United Nations Human Rights Committee, 2011, p. 13):

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

As the UNGP goes on to note: "...enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention..." (United Nations Human Rights Committee, 2011, p. 14).

The UNDRIP is widely recognised as the articulation of broadly accepted international human rights in the particular context of Indigenous Peoples rather than an instrument of creating new rights (Anaya, 2008; Davis, 2012). Accordingly, the business enterprise responsibility to respect the rights of Indigenous Peoples as articulated in UNDRIP, in particular the right to grant or withhold FPIC to development on their lands,<sup>1</sup> would appear clear. This much is also clear from the several authorities cited earlier (see for example International Council on Mining and Metals, 2013; United Nations Food and Agriculture Organisation, 2016; United Nations Global Compact on Business and Human Rights Network, 2013). This responsibility is understood to exist irrespective of a state's willingness to accept this principle or the content of domestic legislation (United Nations Human Rights Committee, 2011).

Yet despite the clarity of this matter as a theoretical proposition, *in practice*, Traditional Owners in Australia<sup>2</sup> would rarely describe their interaction with the mineral resources sector as characterized by the principle of FPIC (Joint Standing Committee on Northern Australia, 2021). As the title to this contribution suggests, this inability to translate theory to practice can be described as 'a failure of praxis'.

Clearly one factor that impacts upon this failure is that relevant domestic legislation in Australia (with one exception) does not incorporate the FPIC principle.<sup>3</sup> This failure is discussed in the Final Report of the Australian Parliament's Joint Standing Committee on Northern Australia Inquiry into the 2020 desecration of Juukan Gorge in Western Australia – *A Way Forward* (Joint Standing Committee on Northern Australia, 2021) and specifically in the context of Western Australia legislation by Storey (Storey, 2021). However, as noted above, the responsibility of the business enterprise is said to exist irrespective of a state's

willingness to accept this principle or the content of domestic legislation. As such, defective domestic legislation should not of itself be the cause of the perception of Australia's Traditional Owners.

This contribution will suggest three related bases for the disjuncture between the theoretical proposition and the practical experience of the mineral resources industry by Australia's Traditional Owners. The contribution will conclude by suggesting a relatively straightforward resolution of this disjuncture. In summary the three suggested bases for the theoretical disjuncture are:

- the interpretation of FPIC adopted by the mineral resources industry;
- the 'agreement or arbitration' model of much domestic legislation; and,
- the difficulties in operationalizing FPIC experienced by the mineral resources industry.

To consider each of these in turn.

### **The Elusive FPIC**

#### ***The Interpretation of FPIC Adopted by the Mineral Resources Industry***

The ICMM Position Statement is described as setting out ICMM members' "approach to engaging with Indigenous Peoples and to free, prior and informed consent" (International Council on Mining and Metals, 2013, p. 1). The ICMM Position Statement describes FPIC as "a process and an outcome". The *process* is summarized as ensuring decisions are: made freely without coercion or manipulation; involve sufficient time; and, are on the basis of full information. "The *outcome* is that Indigenous Peoples can give or withhold their consent to a project..." (International Council on Mining and Metals, 2013, p. 1). However, this clear statement of the implications of the recognition of FPIC is qualified somewhat when the "Recognition Statements" and "Commitments" that also form part of the ICMM Position statement are considered. Recognition Statement 4 contains the following passage:

In most countries ..., "neither Indigenous Peoples nor any other population group have the right to veto development projects that affect them", so FPIC should be regarded as a "principle to be respected to the greatest degree possible in development planning and implementation".

(International Council on Mining and Metals, 2013, p. 3 – emphasis added)

In the passage above the remarks in quotations are referenced to the UN Department of Economic and Social Affairs (2008).

The implication of the qualification in Recognition Statement 4 can be seen in "Commitments" 4 and 5 which advise respectively that ICMM members will: "[w]ork to obtain the consent of indigenous communities" but also that "[w]here a host government requires [ICMM] members to follow processes that have been designed to achieve the outcomes sought through this position statement, ICMM members will not be expected to establish parallel processes" (International Council on Mining and Metals, 2013, p. 4).

In short, the ICMM commitment is to the procedural aspect of FPIC and not the outcome. Even in the context of process, ICMM members will accept the direction of the state as to how these are to be carried out.



A practical illustration of the application of the ICMM view can be seen in the oral testimony of the Chief Executive Officer of the Minerals Council of Australia (MCA), Ms Tania Constable, to the recent Australian Parliamentary Inquiry into the destruction of Aboriginal cultural heritage by Rio Tinto at Juukan Gorge (“the Juukan Inquiry”). The MCA is a member of the ICMM. This aspect of Ms Constable’s testimony was included in the Juukan Inquiry’s Final Report.

The minerals industry recognises the United Nations Declaration on the Rights of Indigenous Peoples as a practical framework to inform engagement, decision-making and partnerships. The Australian minerals industry understands FPIC as genuine and good-faith engagement aiming to achieve consent in the form of a land use agreement that sets out how the participants will work together to maintain the consent over the life of a project. (Joint Standing Committee on Northern Australia, 2021, [6.88])

Clearly from this perspective, FPIC is a process and an ‘aspiration’. Achieving consent is a desirable objective. UNDRIP itself is reduced from an authoritative statement of contemporary international law to a “practical framework”. In this respect the ICMM/MCA approach to FPIC is reflective of the “minimalist” and “instrumentalist” approaches described by Anaya and Puig (2017).

The ICMM reference to the significance of host government determined processes and Ms Constable’s reference to “land use agreements” provide a useful segue to the next basis of the disjuncture under examination: domestic legislation.

### *The ‘agreement or arbitration’ Model of Land Use Legislation*

As discussed above, the expectation is that a business enterprise will uphold fundamental human rights irrespective of domestic legislation. However, in an environment, such as the mineral resources industry, where statutory approvals to operate are a necessary component of any activity, the content of domestic legislation is a relevant matter to be considered.

Much Australian land-rights and Indigenous cultural heritage legislation adopts an ‘agreement or arbitration’ model in the context of a project proponent’s dealings with Traditional Owners. The essential aspect of this model is that a proponent will be encouraged (or required) to negotiate in good faith with the Traditional Owners of the project-affected lands with a view to concluding a statutorily recognised agreement. The agreement will involve the elements of Traditional Owner consent to the undertaking of the project by the proponent and the conditions under which it may proceed. Depending in part on the legislation under which the negotiations are conducted, the project conditions may include aspects of the benefits to be paid to the Traditional Owners and their community by the proponent and opportunities for economic participation by the affected community. The agreement will also usually include conditions regarding the protection, management (and destruction) of Indigenous cultural heritage during the life of the project. Again, depending on the legislation in question, the agreement may also go to issues such as environmental management and project site rehabilitation.

The sting in an otherwise apparently commendable tail comes if the proponent does not reach an agreement with the Traditional Owners. Under the ‘agreement or arbitration’ model, a failure by Traditional Owners to conclude an agreement with the proponent will entitle the proponent to make application to either (or both) a statutory tribunal or relevant state minister for authority to proceed in the absence of an agreement. Inevitably, the criteria by which

Table 8.1 Referenced Legislation

<i>Full Title</i>	<i>Sections Referred to</i>
<b>Commonwealth of Australia</b>	
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth)	
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth)	
<i>Native Title Act 1993</i> (Cth)	ss 24MB- 24MD, 25–44, s 38(2)).
<b>Queensland</b>	
(Australian sub-national “State”)	
<i>Aboriginal Cultural Heritage Act 2003</i> (Qld)	ss 80–120
<b>Victoria</b>	
(Australian sub-national “State”)	
<i>Aboriginal Heritage Act 2006</i> (Vic)	
<b>Western Australia</b>	
(Australian sub-national “State”)	
<i>Aboriginal Heritage Act 1972</i> (WA)	ss 134–167
<i>Mining Act 1978</i> (WA)	ss 67 and 105A

the tribunal or minister are to determine the proponent’s application will focus on assessing the desirability of the project to the state, not the detriment to, or articulated objections of, the Traditional Owners and their community.

Examples of this model of legislation, as shown in Table 8.1, can be seen in the *Native Title Act 1993* (Cth (“NTA”)) (see ss 24MB- 24MD, and 25–44 regarding the “future act” “Right to Negotiate” procedure)

Under the scheme of the NTA if a proponent seeks to undertake an action that will have an effect on common law recognised Indigenous peoples, in law arising through traditional law or custom (“native title rights and interests”), there is specified procedure that must be followed. The specifics of the procedure vary depending on what particular action is contemplated. Generally, the greater the potential impact on native title rights and interests the greater the requirement to engage with Traditional Owners.

In the case of the proposed grant of a mining title the NTA requires a proponent to undertake negotiations with the Traditional Owners. The object of the negotiations is to reach an agreement as to the granting of the title. Under the NTA (s 33) negotiations at this stage can contemplate the ultimate agreement including the payment of “royalties” to the native title holding/claiming community. If an agreement is reached the title can be granted (NTA s 31). At the conclusion of the period, if no agreement is reached the state or the putative miner can seek arbitration of the matter before a statutory administrative tribunal whose members are appointed by the Government on a limited tenure basis (NTA s 35).

The tribunal can determine to approve, approve on conditions or not approve the proposed grant. However, the determination cannot include provisions relating to royalty payments (NTA s 38(2)). The criteria tribunal is required to take into account in making its decision include the affect on the native title holding communities and their wishes as well as the “economic or other significance” of the grant and the “national interest”.

In practice over the last ten years in over 95% of cases brought to the tribunal the determination has been that the title be granted. This preponderance of likelihood that a proponent’s

application to the tribunal, in the absence of agreement, will be successful obviously impacts upon negotiations. Both sides enter negotiations aware that irrespective of whether Traditional Owners reach an agreement the proponent's title will be granted. However, if Traditional Owners resist reaching an "agreement" there will be an ultimate financial penalty for refusal arising from the inability for a determination to include royalty provisions.

The situation is described by the Kimberley Land Council from the northwest of Western Australia in a submission to the Juukan Inquiries an excerpt of which is included in the Inquiry's Final Report:

The extremely high likelihood that proponents will obtain the necessary approvals even if they don't reach agreement with and obtain the consent of native title parties means that the playing field for agreement-making is never level and native title parties participate in the future act process knowing that if they don't reach agreement with a proponent there is an almost 100% chance the proponent will have its interest granted if it makes a future act determination application.

(Joint Standing Committee on Northern Australia, 2021, [3.87])

The Aboriginal Cultural Heritage Act 2021 (WA) (see ss 134–167 regarding Aboriginal Cultural Heritage Management Plans and Tier 3 activities) and the Aboriginal Cultural Heritage Act 2003 (Qld) (see ss 80–120 regarding Cultural Heritage Management Plans) are examples of a similar approach. In the scheme of both these pieces of legislation if Traditional Owners do not conclude an agreement regarding "managing" (usually code for disturbing or destroying) cultural heritage the proponent can simply have the management plans approved by the relevant Minister.

The effect therefore is that the 'agreement or arbitration' model prevents the achievement of "free" consent. In addition to the 'threat' of arbitration, frequently the agreement aspect of these models is characterized by (statutorily) short negotiation time frames and an inequality in the resources that can be allocated to the negotiation process (Joint Standing Committee on Northern Australia, 2021, [6.54]–[6.65]).

### ***Operationalizing FPIC***

This final basis of disjuncture seeks to identify the potential for the aspirations of a business enterprise to genuinely adhere to FPIC in its dealings with Indigenous Peoples to be thwarted by the difficulties of translating policy aspirations to practical outcomes in the field. The phenomenon is described in the testimony of an academic commentator, Professor Deanna Kemp, to the Australian Parliamentary Inquiry. This aspect of Professor Kemp's testimony was also included in the Inquiry's Final Report.

As researchers, we ... track what the industry commits to. It's all very voluntary. It's self-regulatory. Our submission is that industry capability to keep up with the commitments that it's making in the policy realm, including around free prior and informed consent, is often lacking. Companies are making commitments in this area but we're not always seeing the capability on the ground, in performance teams, to support the commitments they're making and to put them into practice.

.... We also hear that FPIC is – you used the word 'bastardised' – kind of being picked apart a little bit. So, it is free, prior and informed, but there is not the consent

piece. We do hear that. We hear that FPIC is consultation. So, we do agree with you that it is a term that's open to interpretation.

(Joint Standing Committee on Northern Australia, 2021, [6.90])

The suggestion here is that a further impediment to operationalizing FPIC is that the relevant agents of business enterprises lack the necessary expertise to ensure agreements genuinely satisfy the requirements of FPIC. Although Professor Kemp's testimony also lends support to the proposition that the particular interpretation of FPIC by the minerals industry is also problematic. The situation regarding the lack of specialist capacity is certainly not unique to Australia. Holden and Ingelson describe how the Republic of the Philippines progressive law regarding Indigenous Peoples' rights in mining projects is undermined at the implementation level (Holden & Ingelson, 2007).

The foregoing has suggested three distinct bases for the disjuncture between broad social expectations around the responsibility of a business enterprise to ensure its dealings with Indigenous Peoples proceeds on the basis of genuine Free, Prior and Informed Consent. In practice, however, these bases are not distinct. An equivocal policy interpretation of FPIC sits comfortably with questionable domestic legislation and is compounded by a lack of capacity, or motivation at an operational level. The collective outcome is that despite the wealth of admirable authority regarding the responsibilities of a business enterprise to uphold Indigenous Peoples' rights regarding matters such as Free, Prior, and Informed Consent the result for Traditional Owners does not achieve these goals: a failure of praxis.

### **Conclusion: Resolving the Disjuncture**

The foregoing contribution has suggested a disjuncture between broad social expectations around the responsibility of a business enterprise with regard to Indigenous Peoples' rights and also posited several bases for this disjuncture. It remains to suggest how this disjuncture can be resolved.

One straightforward approach is for a proponent enterprise to approach negotiations with Traditional Owners by commencing with the undertaking that the project will not proceed without the genuine Free Prior and Informed Consent of the Traditional Owners, thereby eschewing any possible recourse to any legislated arbitral tribunals. Straightforward as this approach is, it suffers from a number of shortcomings. One of these is the likely negotiation resource imbalance between proponent and affected community. This can of course be remedied with the provision of the necessary resources and sufficient time for the affected community to develop the capacity to deploy these resources to best advantage. Another shortcoming is that all parties to the negotiation are likely to be affected by prevailing local/industry expectations regarding usual negotiation outcomes. These expectations will in turn be impacted by the negative effects of the 'agreement or arbitration' model. However, this shortcoming can also be overcome, for example, with the use of experienced consultants with a broad familiarity (beyond the local jurisdiction) of agreement outcomes (O'Faircheallaigh, 2015).

A potentially significant shortcoming lies in the structure of domestic natural resource legislation application "priority" rules. Under such rules the applicant for a natural resource (for example minerals) title may lose their "priority" in respect of the application if they exceed a regulatorily determined period for the conclusion of resolution of land access issues (including resolution of agreements with Traditional Owners). An example of this structure

can be seen in the Mining Act 1978 (WA) where, under s105A, an applicant for an Exploration Licence (EL) has priority over any subsequent applicant in respect of the grant of an EL in the application area and the holder of an EL has, under s67, priority in any future application for a (productive) Mineral Lease. In this scenario the successor applicant to a proponent who was prepared to give the suggested undertaking, but did not conclude an agreement in the necessary timeframe, may not be inclined to give a similar undertaking but rather rely on statutory arbitration provisions to resolve access issues.

As a matter of statute, this shortcoming cannot be resolved without amendment to domestic law. As a matter of negotiation practice, the Traditional Owners would be as aware of the statutory priority provisions as the proponent. While not an optimal outcome, this would place the Traditional Owners in the position of negotiation with a proponent prepared to give the undertaking but constrained by domestic law on the one hand, and a proponent who was not willing to give the necessary undertaking and *was* prepared to utilize domestic law to full advantage. The likelihood is the former proponent would be seen as a preferable negotiation and ongoing land use partner. Despite these shortcomings, there is a clear message conveyed in a proponent commencing discussions with the suggested undertaking.

Clearly there are mechanisms by which a business entity can uphold contemporary international legal norms and expectations if it possesses the necessary commitment. Unfortunately, despite the existence of remedial measures such as those described, it is perhaps reflective of the *actual* level of commitment to the acknowledged human rights responsibilities of, particularly the mineral resources sector, that UNDRIP and FPIC are in practice seen as a “framework” and a “process” but not an outcome.

### Notes

- 1 The reference is particularly to UNDRIP, Art 32.2 but the FPIC principle is also utilised elsewhere in UNDRIP.
- 2 The term “Traditional Owners” is commonly adopted by Australia’s Indigenous Peoples in referring to those Indigenous People who, under traditional law and custom, have a particular connection with a specific area of land (“own” that land). Thus, an Indigenous person may live in, for example, Sydney and even “own” (under non-Indigenous law) land there but not be a Traditional Owner of Sydney which are (only) the Gadigal People.
- 3 The key relevant domestic legislation (See Table 1) is the *Native Title Act 1993* (Cth), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and relevant sub-national (state) Indigenous cultural heritage legislation such as the *Aboriginal Cultural Heritage Act 2021* (WA) and the *Aboriginal Heritage Act 2006* (Vic). The exception noted is the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

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# 9

## OPPORTUNITIES FOR MEANINGFUL ENGAGEMENT

### A Canadian Perspective on Regulatory Tribunals

*Patricia Fitzpatrick and Heather Fast*

#### **Introduction**

What opportunities do citizens have to make their voices heard by the government? Government actions and decisions that are intended to represent the public interest must include opportunities for engagement.<sup>1</sup> In Canada, this typically is interpreted to mean that all those who have an interest in a particular issue are permitted to participate in government decision-making processes related to that issue. Efforts to limit engagement to those who are deemed “directly affected” are seen to challenge the openness of a participatory program by excluding interested groups, thereby putting the legitimacy of the process into question (e.g., Salomons & Hoberg, 2014). It has also been argued that tests to determine the extent of one’s interest have the potential to increase bias in the “approved” participants (e.g., Fluker & Srivastava, 2016; Salomons & Hoberg, 2014; Sherman et al., 1996). For example, applying a test to exclude those determined to be “not directly affected” in a trans-Canadian pipeline project reduced the number of public interest participants and limited the range of perspectives considered by the decision-maker. (Sinclair et al., 2022).

That being said, while participation in environmental decision-making processes is typically open to all, there is recognition that more must be done to address typically hard-to-reach interests. In particular, it is important that the inputs of marginalized communities are meaningfully considered to ensure that the interests of those who are often most detrimentally impacted by negative environmental impacts are addressed. An important question then, is: how are the voices of the public recognized in decision-making processes, particularly when the decision is one step removed from government? The answer involves a range of different governance processes, facilitated by public officials, bureaucrats, and regulatory agencies, such as tribunals, boards, and commissions.

In Canada, there are hundreds of different tribunals that facilitate involvement in government decision-making processes. The structure of these tribunals varies depending on the tribunal’s purpose and legal powers. Generally, tribunals consist of a small number of government appointed experts (“panelists”, “commissioners”, etc.), supported by government-funded staff persons, who facilitate public engagement in decision-making processes by providing information and hosting public events, among other things. Tribunals are also responsible for reviewing a broad range of information submitted by participating stakeholders and publicly

reporting their findings. Tribunals have a broad spectrum of purposes and powers. For example, adjudicative tribunals, sometimes also referred to as quasi-judicial tribunals, resolve disputes and make decisions in their specific areas of expertise. The issues addressed can include conflicts between government and citizens (e.g., the Immigration and Refugee Board) and disputes between citizens (e.g., Residential Tenancies Boards). Adjudicative tribunals are empowered to make decisions, which may include establishing fines and other penalties.

Another important category of tribunals in Canada is administrative tribunals. This type of tribunal generally does not have the power to make legally binding decisions and instead focuses on providing advice and recommendations to the public official (often a cabinet minister) responsible for making final decisions. However, administrative tribunals play an important role in facilitating public engagement in government decision-making processes. For example, the work by administrative tribunals is sometimes the only opportunity for direct engagement with the public and with the data being used to make decisions, to question the process, and provide independent evidence to decision-makers. In this way, the work of administrative tribunals may have a profound impact on citizens' daily lives and the environment.

The purpose of this chapter is to consider opportunities for meaningful engagement in administrative tribunals. We begin by briefly reviewing contemporary literature surrounding meaningful engagement. Our review considers both the principles which should shape government-led participatory opportunities, as well as the design components which enable better or best practice.

Next, we explore the dynamic of engagement in active administrative tribunal processes in Canada. Our statutory review identified fifty-five administrative tribunals which play an advisory role to government, and have legislative requirements for stakeholder engagement. Four broad tribunal matters emerge: natural resources (related to primary resource exploitation), public utilities, financial & consumer services, and matters largely within federal jurisdiction (i.e., communication, patent medicines and transportation). To better understand how the public can be engaged in these processes, we employ a case study approach and examine the practices of seven Canadian tribunals. From this review it is apparent that access to meaningful engagement by the public varies considerably in Canada. Although each type of tribunal has elements of better practices, a fulsome approach – in either law or application – remains elusive.

### **Better/Best Practice Public Engagement**

There is significant interest in public engagement, spanning a variety of disciplines, which contemplates the role of the public in government decisions (e.g., Fitzpatrick & Dilay, 2020). While terminology differs, the underlying principle is that people want the option to have a voice in the decisions which impact them. As noted by Warren (2009, p. 3), “the democratic potential of government resides in the potentially responsive linkages between what governments do and what citizens receive.” Stakeholder engagement in legislative and administrative proceedings can help shape these decisions (e.g., Zillman et al., 2002).

In Canada, academics and advocates have long been concerned about engagement in governance processes, with a focus on land use planning and environmental governance (e.g., Parkins & Mitchell, 2005; Tuler et al., 2002; Webler, 1995). Work in this area often shares important tenets with deliberative democracy, which values free and fair public dialogue as essential to the decision-making process in the public interest. This approach encourages interaction among a broad range of policy actors, subject to normative constraints of the



public sphere (e.g., Enslin et al., 2001; Wiklund, 2005). In this way, meaningful engagement is often designed for the public, rather than those assessed to be stakeholders. Engagement is predicated on process design and individual comportment directed at building consensus through mutual learning, rather than antagonistic self-aggrandizing. In doing so, the decisions are seen to be more robust information and more reflective of public will (e.g., Canadian Environmental Assessment Agency, 2001; Pring & Noe, 2002).

Meaningful engagement is also important for legitimizing governance processes influenced by the sometimes conflicting political and economic priorities of governments (e.g., Chapin & Deneau, 1978; Johnston, 2016; Mikadze, 2016; Parkinson, 2003). In an environmental context, this is, in part, because of the tension between the liberal-democratic basis of Canada's political system and its economic dependence on the exploitation of natural resources. While Canada's democratic political system is based on principles of citizen participation, the Canadian economic system is not. This is where conflict can occur. Canada has a capitalist economic system that requires continual growth and generation of economic profits and often relies on private industry to achieve these economic goals. Canadian governments also rely upon the use and sale of Canada's natural resources to support their economic objectives. As a result, Canadian governments at both the federal and provincial levels face considerable pressure to prioritize the natural resource industry's economic interests over the environmental interests of the general public. Unfortunately, this means public interests and environmental considerations are often externalities in decision-making processes.

In order to balance the interests of industry with the interests of other stakeholders, including the public, and fulfill the political priorities of government (i.e., representing the public's interests and securing public support), there have been dedicated efforts to include more opportunities for meaningful public participation in governance processes, especially when the development and sale of natural resources is involved (Gibson et al., 2016). However, there is heavy reliance on public advocacy and voluntary (i.e., unpaid) public participation to bring public interest concerns forward. Thus, the responsibility of ensuring public interests in environmental protection are brought forward in governance processes has largely been placed on the public.

Work related to stakeholder engagement goes beyond the environmental sector, with robust literature in business & economics, education, philosophy and health, among others (e.g., Fitzpatrick & Dilay, 2020). For example, international organizations have recognized the value of meaningful consultations and engagement with public stakeholders for business operations. This includes the United Nations Guiding Principles on Business and Human Rights (UN, 2007) and the Organization for Economic Co-operation and Development's Due Diligence for meaningful stakeholder engagement in the extractive sector (OECD, 2017).

Participatory standards have also been established in international legal developments, such as the *Aarhus Convention*. Signatories of the Convention are required to implement decision-making processes that meet a higher legal standard of participatory practice than currently seen in countries that are not signatories to the Convention (e.g., Canada). For example, adherence to this convention requires the government to provide meaningful opportunity for members of the public to appeal decisions (e.g., Hartley & Wood, 2005; Weaver, 2018).

Beyond the Aarhus Convention and other international standards, there is rich literature surrounding what makes a process "meaningful" – or, rather, what contributes to "dissatisfaction." Application of the field is quite far-reaching, extending to all areas of both public (i.e., government) and private (i.e., private corporations) governance that involve developments and other actions that require a social licence (e.g., Dare et al., 2014; Hurst et al., 2020; Moffat et al., 2016).

A meaningful engagement process increases transparency about the project, and the decision-making process and outcomes, including the costs, benefits, and risks of different options (Winfield, 2016). It provides value added by providing a clear opportunity for specialized knowledge in project design (e.g., Usher, 2000). Thus, developing a well-designed and inclusive engagement processes is beneficial for all sectors and stakeholders that engage with the public.

Meaningful engagement is predicated on a well-crafted strategy with informed design, grounded in meaningful principles. Participatory design carefully considers the dynamics of engagement. Fung (2003, 2006), for example, identifies several interrogative question areas, including:

- Who should be involved (ranging from general interest to elite)?
- How are participants recruited and supported?
- How might the participatory process be structured to elicit the desired feedback from the group?

From there the appropriate design characteristics are selected. For example, if the intent is to engage the public-at-large, the design needs to minimize the barriers to participation, ensure there are sufficient supports for that engagement, and implement actions to seek out perspectives from typically hard-to-reach citizens.

Equally important are the principles which underpin a rich participatory experience. Beyond the “whos” and the “hows” are the ideals that inform why engagement is important, and how can it be structured in a way to make it meaningful (e.g., Arnstein, 1975; Sinclair & Diduck, 2021; Sinclair & Doelle, 2003). At its most basic level, meaningful participation

... ensures that all interested persons and organizations have the opportunity to contribute their knowledge and views, and to see how their contributions are used. As a result, proponents and government decision makers receive better information – enabling them to more effectively address public concerns – and final decisions better reflect values (of the public)

(Canadian Environmental Assessment Agency, 2001, p. 22)

However, as observed by Stewart and Sinclair (2007, p. 163), an understanding of meaningful participation more often focuses on the dynamics which, in fact, make it “criticized as *dissatisfying* by participants” (emphasis added). Perhaps the best guidance on what makes for a *meaningful* process is simply that “processes must be perceived by interveners [stakeholders] to give them a real opportunity to be heard and to feel that they have had a chance to influence the ultimate decisions” (Expert Panel Review of Environmental Assessment Processes (2017, p. 14). To head in that direction, meaningful engagement is predicated on programs which are considered to be:

- **Open to all** – meaning that engagement should not be limited to the elite, or those who are thought to have expertise. Participatory processes should ensure all have the opportunity to share their information, and such processes should ensure that the interests of all who are, or who are believed to be, impacted by the decision are represented (e.g., Expert Panel Review of Environmental Assessment Processes, 2017; Parkinson, 2003; Webler, 1995; Wiklund, 2005).

- **Learning-oriented** – activities should be focused on encouraging active engagement and ongoing education (e.g., Diduck et al., 2015; Doelle, 2018; Sinclair & Diduck, 2016; Stewart & Sinclair, 2007) by ensuring stakeholders can fully access and engage with the process and the information (e.g., Halseth & Booth, 2003; Wiklund, 2005). Importantly, this is predicated on evidence “that is, and is seen to be unbiased, accurate, accessible and complete” (Expert Panel Review of Environmental Assessment Processes, 2017, p. 14).
- **Legitimate**, meaning the nature of the program should be considered to be genuine and foster support for both the process and decision through demonstrating “accountability, transparency, access to participation, deliberation and, sometimes, fairness” (Bernstein, 2004, p. 147). Participants must have confidence in the decision-making processes, which relies on transparency in decision-making (e.g., Expert Panel Review of Environmental Assessment Processes, 2017).
- **Relationship-oriented**, meaning rather than seek input on an as-needed basis, effective programs are longitudinal in nature, nurturing repeated and returning participation in decisions. This marks a turn in approach, and the turn in phrase from “participation” to “engagement” (e.g., Brown & Keast, 2003; Wallis, 2006).

Drawing from this material, we identify the principles, and associated design characteristics which inform a “meaningful” process (see Table 9.1).

Importantly, literature reviewed for this work focuses on the public-at-large. It does not address responsibilities for consultation with Indigenous people, who in Canada have inherent, protected rights under the Constitution. The Government of Canada and other Canadian governments have also made commitments to the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, which involves recognition of the rights of Indigenous peoples to free, prior and informed consent (“United Nations Declaration on the Rights of Indigenous Peoples,” 2007). This includes the federal United Nations Declaration on the Rights of Indigenous Peoples Act (SC 2021, c 14) and British Columbia’s Declaration on the Rights of Indigenous Peoples Act (SBC 2019, c 44). This type of legislation has significant implications for Indigenous consultation and meaningful engagement in government decision-making processes, particularly in the natural resource sector (e.g., Nosek, 2017). Nor does this work consider First Nations, Metis or Inuit legal traditions, which may have different principles which inform the nature and design elements for meaningful consultation with rights-holders (e.g., Craft, 2019; Mills, 2016).

### **Bringing the Public Into Administrative Tribunals**

A variety of individuals and organizations share responsibility for making decisions in the public interest in Canada, including members of the legislature or parliament, bureaucrats, and the judiciary. The Canadian Constitution (Constitution Act, 1982, being Schedule B to the Canada to the Canada Act 1982 (UK), 1982, c 11) identifies and sets out the powers associated with the executive branch (government), legislative branch (Parliament, Legislatures), and judicial branch (courts). These branches of power have different functions and exercise their legal powers in different ways. For example, an important feature of the judicial branch is its independence from the political processes associated with government and other elected public officials when exercising decision-making powers through the courts. Although each branch has different powers and duties, they all have responsibilities towards the public, both in terms of public engagement and consideration of public interests.

Table 9.1 Principles and design characteristics of participatory processes

<i>Principles</i>	<i>Design characteristics</i>
Open to all	<p>Provide <b>adequate notice</b> which involves ensuring sufficient time for individuals to learn about the opportunity, review the necessary information, prepare for participation, and in some cases develop informed preliminary perspectives (Doelle, 2018; Sinclair &amp; Diduck, 2016; Stewart &amp; Sinclair, 2007; United Nations Economic Commission for Europe, 1998)</p> <p>Include <b>multiple modes</b>, or ways through which stakeholders can provide information, including written feedback, information sessions, and public hearings, among others (Sinclair &amp; Diduck, 1995; Sinclair et al., 2016; Stewart &amp; Sinclair, 2007)</p> <p>Implement <b>unrestricted standing</b>, meaning that anyone should be permitted to provide input to the decision in any mode offered by the Tribunal (Expert Panel Review of Environmental Assessment Processes, 2017)</p> <p>Support <b>representative involvement</b> (Stewart &amp; Sinclair, 2007), which may require additional recruitment tools to ensure that the voices of members of right-deserving and hard-to-reach groups are solicited.</p>
Learning-oriented	<p>Full <b>access to information</b> (Expert Panel Review of Environmental Assessment Processes, 2017; Sinclair &amp; Diduck, 2016; Stewart &amp; Sinclair, 2007)</p> <p>Provide <b>participant funding</b> to support contributions of individuals, non-governmental/not-for-profit organizations, and others with financial need, to support the idea that evidence can be independently challenged (Doelle, 2018; Stewart &amp; Sinclair, 2007)</p> <p>Include opportunities for <b>deliberation and open dialogue</b> (Stewart &amp; Sinclair, 2007), not reliant on legal representation for full participation.</p>
Legitimate	<p>Be <b>transparent</b> in the process and decisions, including demonstrating how input influenced decision (Lynn &amp; Kartez, 1995; Stewart &amp; Sinclair, 2007)</p> <p>Provide an opportunity to <b>appeal</b> the decision (Doelle, 2018; Woods, 2009)</p> <p>Include mechanisms to <b>demonstrate integrity &amp; accountability</b> (Stewart &amp; Sinclair, 2007)</p>
Relationship-oriented	<p>Engage stakeholder <b>early</b> to ensure that input is solicited before irrevocable action is made (Doelle, 2018).</p> <p>Provide opportunities for <b>ongoing engagement</b> to facilitate a longer-term relationship (e.g., Edwards, 2001)</p>

*Note:* The references are for illustrative purposes, and are not designed to be exhaustive.

The allocation of constitutional powers to these different branches has resulted in a complicated array of laws, decision-making processes, and administrative rules in Canada, depending on the specific functions and powers being exercised. Due to this structure, and the significant number of powers to be exercised (especially in terms of the executive branch – i.e., government), these powers can be delegated to different individuals and organizations, as applicable. For example, administrative tribunals have been increasingly created by Canadian governments of all levels since the mid-20th century to help administer regulatory schemes and assist the government with public interest decisions (McLachlin, 2013). Administrative tribunals are arm’s length agencies empowered through provincial or federal legislation to make decisions (or recommendations) to government about the appropriate course of action related to the matters before them (e.g., Clément, 2009; Kuttner, 2006).

Historically, there has been some tension between the judiciary and the other branches of power in Canada, largely due to the operations of regulatory bodies like quasi-judicial (adjudicative) tribunals that may be perceived as overlapping with the duties of the Canadian courts. As noted by former Chief Justice Beverly McLachlin (2013), “[v]irtually all the important areas of endeavor and social concern – areas once under the jurisdiction of the common law courts – have been, to coin a term, ‘administerized’”. However, the further development of legal processes, such as judicial review, that allow tribunals to be held accountable for the processes and decisions they oversee has settled much of this tension. Today, there is recognition of the important role that the specialized expertise and policy perspectives of administrative decision-makers play in governance processes across Canada.

In Canada, administrative tribunals play a significant role in governance structures at all levels and have direct influence on the lives of citizens and decisions meant to reflect public interests. Although administrative tribunals tend to have a more advisory role in decision-making processes, such tribunals are often responsible for facilitating public participation, for example, through public hearings. Thus, administrative tribunals play a central role in Canadian society and greatly impact the lives of Canadians (Lamer, 1991).

### **Participatory Practices in Canadian Regulatory Tribunals**

The study identified fifty-five administrative tribunals (also called boards or commissions) with engagement requirements, including the potential for public hearings. We included the option for public hearing as a criterion as it is a structured forum where people, including individuals and organizations, can present evidence, opinions, ideas, and perspective on a topic under consideration. Hearings have clearly stated rules and procedures. However, there is significant liberty with respect to the nature of the hearing created under a legislative framework. Some hearing bodies are quasi-judicial in nature, following the rules of the judicial system. Other hearing bodies are informal, with more opportunity for liberties in design and implementation. The important element, here, is that a hearing provides the public with a chance to speak openly.

Although there are hundreds of tribunals in Canada, the focus was on administrative tribunals that play an advisory role in government decision-making processes – i.e., provide advice and recommendations, and facilitate stakeholder engagement. Tribunal selections were made based on a review of applicable laws, policies, and administrative rules focused on identifying required opportunities for stakeholder engagement, in particular, public hearings.

The tribunals selected addressed a range of different issues, but can be grouped into several categories (see Table 9.2):

- **Natural resources:** tribunals addressing issues related to primary resource exploitation, such as forestry, oil, gas, and fisheries, as well as resource management processes like impact assessment and land use.
- **Utilities:** tribunals regulating the development and operation, as well as rate charges to customers, of public utilities responsible for the operation, production, and distribution of electricity, natural gas, water, telecommunications, and pipelines, among other things.
- **Financial and consumer services:** tribunals focused on insurance, securities, trade and consumer rights.
- **Federal:** three administrative tribunals primarily within federal jurisdiction addressing issues related to telecommunication, patent medicine, and transportation.

Table 9.2 Focus of Canadian administrative tribunals by geography

	<i>Natural Resources</i>	<i>Utilities</i>	<i>Financial &amp; Consumer Services</i>	<i>Communications</i>	<i>Patent Medicine</i>	<i>Transportation</i>	<i>Total</i>
Canada	2		1	1	1	1	6
Alberta	2	1	2				5
British Columbia	3	1	2				6
Manitoba	1	1	2				4
New Brunswick		1	2				3
Newfoundland and Labrador	1	1					2
Northwest Territories	6	1					7
Nova Scotia		1	1				2
Nunavut	4	1					5
Ontario		1	3				4
Prince Edward Island	1						1
Quebec	1	1	1			1	4
Saskatchewan		1	1				2
Yukon	3	1					4
<b>Total</b>	<b>24</b>	<b>12</b>	<b>15</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>55</b>

What emerged from the review of these tribunals is a pattern of engagement requirements that seems to correspond to the subject matter and governance processes the administrative tribunal was responsible for. Administrative tribunals that play a role in public interest decision-making processes, including those which are central to environmental sustainability challenges (e.g., natural resources, utilities) and address issues of public concern (e.g., financial and consumer services) tend to have more mechanisms to facilitate meaningful engagement. It should also be noted that tribunals addressing subject matter impacting the exercise of Indigenous rights (e.g., natural resources) and those tribunals located in the northern territories also tended to have better participatory mechanisms. This is likely due to the requirements of land claims agreements and ongoing Indigenous advocacy efforts focused on meaningful Indigenous involvement in governance processes.

To better understand how engagement unfolds in a Canadian context, we reviewed seven case studies. Our selection of cases was not issue-specific, nor proportional to the relative frequency across Canada; it was designed to include examples from each of the four categories. In this way we were not limited to tribunals focused on a particular process (such as impact assessment) or thematic area (sustainability challenges), but could learn from administrative tribunals across Canada.

We purposefully chose two cases addressing natural resources, two cases addressing utilities, one case addressing financial and consumer services (undertaken in two jurisdictions) and one case focused specifically on federal matters. In selecting cases, consideration was given to:

- Timing, with recently completed activities considered more favorable;
- Comparability, meaning seeking similar cases within each sector;
- Access to information, with cases that had information available electronically considered more favorable; and,
- Geography, seeking representative cases across the different regions of Canada (Northern, Western, Central, Atlantic, and Federal).

The criteria were applied in sequential order, starting with a preliminary list of cases completed in the last five years. Next, we identified opportunities for comparability between cases in each sector, taking into account access to information. Finally, we applied the geographic lens. With respect to the federal case, we selected the tribunal with the most active tribunal.

Table 9.3 identifies the cases examined in this research. For each case study, we reviewed all available case documentation. We supplemented this document review with one key informant interview per case study. The key informants were selected based on involvement in the case, fulfilling the role as tribunal member (three participants), or stakeholder (three participants, two from non-governmental organizations, one from industry). These interviews served to clarify questions we had arising from the documentation, and to broadly identify what participants saw as important enabling meaningful participation in administrative tribunal processes.

Importantly, while all cases have elements of better practice, no case demonstrated the full suite of design characteristics which might lead to more meaningful engagement. For example, no cases included practices designed to foster relationships with the constituencies, such as early or ongoing participation. Opportunities for stakeholder engagement are often limited to the later stages of decision-making processes when the design and scope has already been determined. Most opportunities also tend to occur during project- or application-specific processes focused on final approval. This means participation in administrative tribunal processes remains limited to the operational phase, despite long-term calls for more engagement at normative and strategic phases (e.g., Smith, 1982).

Table 9.3 Case studies

<i>Tribunal</i>	<i>Jurisdiction</i>	<i>Case</i>
<i>Utilities</i>		
Nova Scotia Utility and Review Board (NSURB)	Nova Scotia (Atlantic)	Nova Scotia Power Annual Capital Expenditure Plan for 2018
Yukon Utilities Board (YUB)	Yukon (Northern)	2017–2018 YUB General Rate Application
<i>Resources</i>		
Bureau d’audiences publiques sur l’environnement (BAPE)	Quebec (Central)	Nicolas-Riou Wind Farm
Environmental Assessment and Stewardship Branch (EASB)	Saskatchewan (Western)	Blue Hill Wind Energy Project
<i>Financial and Consumer Services</i>		
Securities Commission	Ontario (Central)	Reducing regulatory burden for Investment Fund Issuers
Securities Commission	Manitoba (Western)	Reducing regulatory burden for Investment Fund Issuers
<i>Federal – Telecommunications</i>		
Canadian Radio-television and Telecommunications (CRTC)	Federal	Report regarding retail sale practices of Canada’s Large telecommunication carriers

*Note:* Specific cases examined for this paper. For the securities commission, which is provincially-focused, we chose to study one case to see how implementation varied across jurisdiction. Full case details, including a more comprehensive review of opportunities for engagement, are available in Fitzpatrick and Alabi (2021).

With respect to legitimacy, only three cases provided opportunities to appeal the decision (CRTC, and both Utilities). The YUB is the only example where the final decision can be appealed directly. The CRTC and the Nova Scotia Utility and Review Board limit appeals to questions of law and jurisdiction, which reduces the scope of issues that can trigger an appeal. This limited opportunity to appeal violates the principles of natural justice and procedural fairness recognized in international law as essential elements of formal engagement processes (Doelle & Sinclair, nd, United Nations Economic Commission for Europe, 1998).

While all decisions had some reference to stakeholder input, the nature of that interplay varied significantly. Each administrative tribunal has legislative requirements related to reporting the results of tribunal decision-making processes. However, there are little to no legal requirements in terms of the required content of tribunal reports and reasons for decisions, including information about how stakeholder input informed said decision. BAPE had the most thorough analysis, dedicating one chapter to this form of accountability. Other processes were less forthcoming, leading participants to express concern about the lack of information on how decisions related to stakeholder input:

“...how those decisions are arrived at. It would be nice to know.”

(Participant 1)



“But over the years... this has gotten less and less obvious about why. They don’t take the time anymore to summarize what people submitted to them...you have to assume they looked at [what the public had to say], but it’s not there.”

(Participant 2)

Demonstrating how feedback was incorporated into the decision-making process helps participants understand how their input was considered in arriving at a final decision (Sinclair & Diduck, 2016). This is also an important way of demonstrating openness, integrity, and accountability by the tribunal.

Likewise, design principles related to encouraging a learning-oriented processes were varied. All tribunals provide access to information, although the fulsome public record surrounding the NSURB decision is no longer accessible online. A statutory requirement for public access to information was seen in all cases, although the scope of information and format in which it was available varied depending on the tribunal.

Only three tribunals (CRTC, and the two utilities NSURB, YUB) award funding for participants. Perhaps unsurprisingly, this follows the legislative scheme of each case study. Only those cases where participant funding is contemplated in the legislation provided it. Where participant funding is provided, interested parties apply, in advance of the hearing. The range of costs cover differ, depending on the details of the program. For example, funding can typically be used to undertake independent research to critique the proposal, hire expert witnesses, and/or legal professionals. In doing so, it allows those who want to challenge the perspective put forward by the proponent in a rigorous manner the funds to do so. Nonetheless, participants who do not receive funding are still typically eligible to participate in the hearing.

Providing participant funding, while necessary, is not sufficient. In all cases funding programs assessed and awarded costs after the engagement was complete – thus making up-front costs a risk. And only YUB compensated participant organizations for time. The absence of financial support is troubling, given the longstanding recognized disproportionate resources between stakeholders, and the need to ensure all can bring forward robust, independent technical expertise for consideration (e.g., Fitzpatrick et al., 2008b; Lynn & Wathern, 1991; Sinclair & Diduck, 2016).

And, when probed, the participants of all but one tribunal (BAPE) found legal representation advantageous for engagement in the process. This is likely due to the fact that administrative tribunal hearings are generally an adversarial process, in many cases, such as in Manitoba, public hearings in environmental decision-making processes are usually only triggered when there is conflict between stakeholders/significant public concern. Proponents engage in an adversarial way – hiring top lawyers, experts – results in need to hire expert assistance; highly technical, follow legal rules of evidence, etc. associated with a court. This need for expert assistance to navigate tribunal processes is particularly troubling when compensation is not provided for participants. In short: how can a process be open to all, when stakeholders need legal representation to participate?

Arguably, the principle with the greatest adherence by the administrative tribunals studied involves designing decision-making processes that are open to all. All cases issued an announcement of commencement which preceded the participatory activities and/or decision. This is a requirement of the legislative schemes for each case study. But, as demonstrated in Table 9.4, the nature of each of these elements varied significantly. Typically, tribunals are required by law to provide public notice in a specified format – usually an appropriate local newspaper. However, in one case, the Manitoba Securities Commission was only

*Opportunities for Meaningful Engagement*

*Table 9.4* Details related to design characteristics of cases which facilitate open access to engagement

<i>Case</i>	<i>Announcement</i>	<i>Notice (days)</i>	<i>Standing</i>	<i>Hearing Participants</i>	<i>Total Participants</i>
<i>Utilities</i>					
NSURB	Website	17	Approval required	4	5
	Email				
	Social media				
YUB	Newspaper	17	Approval required	3	5
	Website				
	Newspaper				
	Radio				
<i>Resources</i>					
BAPE	Website	45 (scoping) /78 (hearing)	Open	2	175
	Email				
	Direct invitation				
	Newspaper				
ESAB	Field Office	30	Open	N/A	30
	Website				
	Email				
	Direct invitation				
	Social media				
	Newspaper				
<i>Financial and Consumer Services</i>					
Securities Commission (combined)	Website	90	Open	N/A	21
<i>Federal – Communications</i>					
CRTC	Website	30	Open, but invitation-only hearing	31	2,300
	Email				
	Direct invitation				
	Social media				
	Newspaper				

required by law to publish public notices on its website. That five case studies went beyond their legislative requirements is notable.

The period of notice varied considerably across case studies – from a minimum of 17 days (i.e., approximately three weeks) for public utilities to 90 days for securities commissions. In our collective experience, a three-week time period is not uncommon in utilities and resource sector notice. However, this puts a significant burden on individuals to learn about the opportunity, review the necessary information, prepare for participation, and, in some cases, develop informed preliminary perspectives for submission.

Most tribunals also provided engagement opportunities open to any interested party. The openness of tribunal proceedings generally aligned with statutory requirements. Thus, standing was largely determined by the applicable legislation. We draw attention to this component, in part, because the early 2010s saw a concerted effort to limit access to participation in resource

decisions in Canada. Restricting standing “forced the public to find ways to have their views heard through protests, the court and other actions,” (Doelle & Sinclair, n.d., p. 4), removing important evidence from the record, and thus the decision. This change (now reversed) was found to reduce “the trust and confidence [in the process] without bringing any obvious process efficiency” (Expert Panel Review of Environmental Assessment Processes, 2017, p. 38).

Public hearings were a common method of engagement; however, the decision to hold a hearing was often discretionary. As such, hearings were not undertaken in all case studies, including the impact assessment in Saskatchewan, nor the two securities commission cases, used this method.

Importantly, only one administrative tribunal – the CRTC – took steps to improve the inclusiveness of the tribunal process. The Commission engaged an external company to strengthen representative involvement by completing public opinion surveys and soliciting information (focus groups, interviews) from rights-deserving, and hard-to-reach constituents. This attention to the representative involvement of stakeholders was not required by the applicable legislation.

The recommendations for change to tribunal practices in Canada that emerged from the case studies reflect common recommendations in the literature designed to make participation more accessible. For example, use of social media channels to interact with the public would expand the scope of individuals exposed to tribunal information (two participants). Most tribunals relied almost exclusively on print media or tribunal websites to provide notice and other information. Similarly, increasing the modes (i.e., methods) of engagement through which the public may get involved was also recommended (three participants). For example, where appropriate, the use of public opinion polls, online focus groups, and semi-structured interviews, as employed by the CRTC, was recommended as a means of creating additional opportunities to collect public input and improving the range of participant voices heard in the process. One participant noted this type of recruitment should be codified in legislation.

Other recommendations brought forward by case study participants included:

- Extending notification periods (one participant),
- Providing earlier opportunities for the public to be involved (one participant),
- Removing the application process and other barriers to participation in oral hearings (one participant),
- Ensuring transparency in the documentation of how participant input influences final decisions (two participants),
- Establishing funding mechanisms that allow participants to be compensated for their time and other costs incurred in the process of participation (four participants). Such compensation should include considerations for providing some advance payments to participants.

While some of these recommendations are quite simple and may already be common practice for tribunals in other jurisdictions, they are indicative of a lack of specific statutory requirements and alignment with internationally recognized best practices in others.

### **Making Processes More Meaningful**

Although our understanding of the principles that facilitate meaningful stakeholder engagement are well-established in the literature, administrative tribunals in Canada fall short.

While good practices were noted in each case, there is substantial room for improvement in order to fully ensure that all interested persons and organizations can be involved and be assured their information was meaningfully considered in regulatory decision-making processes in Canada. The cases illustrate significant deficiencies related to ensuring engagement is relationship-oriented across all tribunal types. There are mixed results related to legitimacy and learning-oriented processes due to differing legal requirements associated with government transparency and accountability (e.g., ability to appeal decisions), access to information, and support for hearing participants (e.g., funding). And while all tribunals included basic elements to ensure the process was open to all, only one sought to ensure that engagement was representative in nature.

Administrative tribunal processes in Canada generally represent a top-down approach as the legal powers of tribunals are directly delegated from government to assist with government decision-making processes. There are few examples of tribunals in Canada that make an effort to build relationships and involve stakeholders throughout their entire process. This gives participants little to no input into the design and scope of the process, which can result in the omission of important issues and/or stakeholders (e.g., Fitzpatrick & Sinclair, 2003; Fitzpatrick et al., 2008a). However, some improvement has been seen in terms of access to information, particularly with the use of online registries/repositories (easily accessible by those with reliable internet services).

When considered in a global context, Canadian administrative tribunals do not reflect international best practices, such as those recognized by international bodies like the United Nations. Canada's poor performance in terms of stakeholder engagement standards is likely due, in part, to the fact that Canada is not a signatory to influential international law such as the Aarhus Convention. The statutes and regulations that set out the basic requirements for stakeholder engagement in Canada often lack detail or allow decision-makers too much discretion to determine the scope of tribunal processes. When the legal requirements for tribunal processes are interpreted more holistically and considered in the context of the overall purpose of the applicable statutory regime (e.g., to facilitate public engagement), there may be more direction. However, legislative weaknesses often create a disconnect between regulatory requirements and the actual experience of public participants in real life. However, legislative weaknesses often create a disconnect between regulatory requirements and the actual experience of public participants in real life.

Often, and, in large part, as demonstrated by our case studies, engagement opportunities in administrative tribunal processes are shaped by what is specified by the legislation. It would seem that most tribunals comply with the standards, and, hopefully, exercise discretionary powers in favor of creating an environment in support of meaningful public engagement. But there is little evidence – outside the CRTC work to promote representative involvement – that the discretionary work of tribunals goes beyond what is contemplated in the legislation. We are reminded of an important caution issued by Doelle and Sinclair (n.d., p. 2): “broad discretion tends to lead to bad decision” (Doelle & Sinclair, n.d., p. 2). Or, in this specific example, broad discretion limits participatory processes, and falls short of meaningful stakeholder engagement.

Nonetheless, there are positive features of engagement employed by regulatory tribunals in Canada which may serve as models for other countries. This includes:

- the public is typically given an opportunity to contribute;
- processes are typically open to all and do not limit engagement to those someone else deems meaningful;

- there are legislative requirements for public notification; and
- the public typically gets access to information (usually online).

These practices are essential for ensuring participation by the public and we suggest they should be adopted by all tribunals.

However, over the last 60 years our understanding of what is meaningful engagement, and how to enable it, has grown. As best-practice standards have been improved, Canadian administrative tribunal practices have failed to keep up as a whole, particularly with the robust literature (see Table 9.1) and some innovative practices emerging in the resource and telecommunications sector.

With scholarly and practical experience across four decades, we struggle with the question “What can be done?” Moving forward, it is essential that legislative reform better enshrine participatory practices that lead to meaningful engagement. Tribunals are only required to meet the minimum thresholds of specific legislative and regulatory requirements; in the absence of marked reform, better performance is discretionary, and sporadic in nature. As discussed by Fonseca & Fitzpatrick in Chapter 6 of this handbook, recent updated federal assessment legislation specifically references meaningful public participation (although it does not define what this is), and provide an opportunity for early public involvement (see also Sinclair & Diduck, 2021). Despite these improvements, significant shortcomings remain in the new legislation, including compressed timelines, discretionary funding, and no consideration of the representativeness of participants. Thus it is important to remain attentive to potential legislative reforms, bringing forward evidence of the utility of, and the mechanism through which, meaningful engagement is fostered.

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### **Note**

- 1 Terminology typically varies by region and time. In Canada, it is most common to consider “public participation”, with a more recent turn towards “public engagement.”

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# 10

## MEANINGFUL STAKEHOLDER ENGAGEMENT

### The Canadian Ombudsperson for Responsible Enterprise (CORE): Guided by Principles

*Sheri Meyerhoffer*

#### **First of Its Kind**

In May 2019, I was proud to take on the challenge of serving as the Canadian Ombudsperson for Responsible Enterprise (CORE). The CORE is the first Canadian Ombud with a business and human rights mandate, and the only Ombud office mandated to hold Canadian garment, mining and oil/gas companies accountable for human rights abuses that have taken place outside of Canada as a result of their operations, including their supply chains. Prior to the CORE, from 2009 to 2014, Canada monitored the conduct of mining and oil and gas companies operating outside of Canada through the Office of the Extractive Sector Corporate Social Responsibility Counsellor. This office was embedded within the department of Global Affairs Canada (GAC). The CORE operates at arm's length from GAC and the addition of garment companies to the CORE's mandate was catalyzed by the 2013 Rana Plaza disaster in Bangladesh which highlighted Canada's exposure in the area of Human Rights in this sector. Significantly, the CORE's mandate<sup>1</sup> also involves promoting the implementation of both the United Nations Guiding Principles on Business and Human Rights (UNGPs),<sup>2</sup> and the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.<sup>3</sup>

Given the CORE's unique mandate, we have attracted international interest in our journey, the lessons we are learning, and the good practices we are developing. As we developed the CORE's operational infrastructure, it became clear that meaningful stakeholder engagement is integral to our work— from design to service delivery. At a fundamental level, stakeholder engagement is key to building and maintaining the relationships necessary to effectively deliver on our unique mandate. We learned very early that the manner in which the CORE engages key stakeholders would have much to do with our success – helping impacted groups access remedy for harms caused by Canadian companies.

#### **The CORE's Key Stakeholders**

The CORE's key stakeholders fall within three main groups: private, public and plural. Our public sector stakeholders comprise key Canadian federal government ministries. This includes Global Affairs Canada, Natural Resources Canada, Employment and Social

Development Canada and Crown-Indigenous Relations and Northern Affairs Canada. It also includes trade-related government agencies like Export Development Canada and inter-governmental organizations such as the United Nations and the OECD.

The private sector is another key stakeholder group. It includes the main industry associations representing the garment, mining and oil and gas sectors and Canadian companies operating outside of Canada in these three sectors. Canada has a significant global footprint when it comes to mining with many Canadian mining companies operating overseas. The main industry associations representing mining companies are the Mining Association of Canada, and the Prospector's and Developer's Association of Canada. When it comes to Canada's oil and gas sectors, the number of companies that operate overseas is smaller in comparison to the mining sector. The Canadian oil/gas sector is represented by several different industry associations, including the Canadian Association for Petroleum Producers, the Canadian Global Energy Forum and Enserva. When it comes to the Canadian garment sector, many companies are small and medium-sized enterprises with operations and supply chains located outside of Canada. Many of these companies are members of the Canadian Apparel Federation and the Retail Council of Canada.

A third key stakeholder group for the CORE is the plural sector which includes civil society and academia. Civil society organizations typically have access to, and work closely with, impacted individuals, communities and workers. This includes but is not limited to Indigenous Peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. It is therefore important for the CORE to work with civil society to understand the needs of those impacted and to raise awareness about how they can use the CORE's complaints mechanism.

During early consultations with Canadian civil society organizations, we were advised against using the term 'stakeholder' when referring to potential or actual victims of human rights abuses. This advice was based upon the fact that those impacted are rights-holders and, given the potential for retaliation against them, should be engaged with in a distinct manner. The CORE adopted this advice early in its mandate and, for this reason, we do not refer to those adversely impacted as stakeholders. However, the CORE's meaningful engagement with adversely impacted groups is implemented in a fashion similar to that of our key stakeholders, with an emphasis on identifying, mitigating and addressing the potential for retaliation.

### **A Principled Approach**

The CORE's work is guided by Article 31 of the UNGPs which outlines effectiveness criteria for non-judicial grievance mechanisms, and the Council of Europe's Venice Principles<sup>4</sup> which is an internationally recognized set of standards that apply to the function of an Ombud's office.

Firstly, in order to deliver **fair and impartial** engagement, the CORE takes a balanced approach, reaching out to stakeholders in equal measure. Our processes must be predictable, measurable and easy-to-understand. They must also be just, objective, equitable and rights-compatible to lead to outcomes aligned with internationally recognized human rights that are responsive to the needs of vulnerable populations.

Secondly, the CORE strives for **transparent and accountable** engagement through the publication of notifications, procedures and reports. This involves keeping parties to a grievance process informed about progress, and providing sufficient information to the public about the

grievance mechanism's performance. This includes working with other government institutions to enhance accountability and changes to policy. This also helps build trust.

Third, **accessibility** underpins the CORE's engagement. It requires the simple and efficient provision of the CORE's services to stakeholders, and particularly to impacted individuals and communities, via multiple formats and platforms that include relevant accommodation for those who may face particular barriers to access. We adopt a systemic approach to identify, remove and prevent barriers to accessibility.

Overall, the CORE's approach is based on continuous learning, drawing from and building upon lessons learned, and at the operational level, grievance mechanisms based on engagement and dialogue in consultation with relevant stakeholder and adversely impacted groups. Trust is key in the effective functioning and delivery of our mandate.

### **Putting Principles Into Practice**

The CORE's ongoing work of identifying and consulting diverse stakeholders and adversely impacted groups continues to yield valuable insight and lessons, as demonstrated through several of the CORE's outputs and documents, including:

- A report summarizing the findings of our inaugural listening tour;<sup>5</sup>
- The operating procedures of the CORE's Human Rights Responsibility Mechanism;<sup>6</sup>
- The CORE's retaliation framework, which is a basis of assessing the risk of retaliation by companies against potential complainants;<sup>7</sup>
- A risk assessment process to be carried out when the CORE visits countries for awareness raising purposes<sup>8</sup>; and
- An Ombud-initiated study on the garment sector<sup>9</sup>

In each case, valuable feedback received from stakeholder groups has shaped and strengthened the quality of the CORE's products – all of which leads to sustaining the critical trust between the CORE and various stakeholder groups.

### **Lived Experience**

In May 2019, attuned to the importance of meaningful stakeholder engagement, the CORE embarked on a "listening tour" to hear from public, private, and plural stakeholders regarding our mandate. We listened carefully and documented the expectations, concerns, and advice of over 200 domestic and international stakeholders. This information helped us shape the direction of the office. It helped us determine our organizational priorities, and how to best implement our mandate. Significantly, we also learned from private stakeholders the challenges that they face in implementing responsible business practices vis-à-vis the local contexts in which they operate. Contexts where the practices of their partners and suppliers often do not respect human rights.

We understood early on that we are not experts. Instead, the stakeholders are the ones with expertise gained from firsthand interactions or impacts. We became better at determining how best to tailor our processes to fit various situations. We learned with whom we should consult, how to consult meaningfully, and when to consult. This became essential for operating and engaging across many different cultures. Asking better questions led to better answers.

Those better answers improved our understanding of the process(es), the parties and how to best accommodate them.

Through all of this, the CORE's commitment to protecting human rights is paramount. Our complaints mechanism is predicated upon bringing parties together through a process and manner that leads to optimal resolution. This is best when all parties feel safe and that their concerns are being heard. This is especially important for those adversely impacted who need to feel that they will not be exposed to harm. But it is noteworthy that companies also need to feel safe.

Through the work of seeking and engaging a broad range of players over its first six months of operation, the CORE was able to garner valuable qualitative and quantitative insights. This curated data also fed the creation of key CORE office systems and processes. Significantly, it influenced the development, implementation, and refinement of one of the CORE's most significant operating instruments, the Human Rights Responsibility Mechanism (HRRM) which is our dispute resolution process. The HRRM is what allows the CORE to review a complaint submitted by – or on behalf of – an individual, organization or community concerning possible human rights abuses resulting from a Canadian company's operations outside of Canada.

The information and feedback obtained through public consultation also helped us better understand when Ombud-initiated reviews may be warranted. Reviews of this nature would be considered or launched in matters where there is sufficient information that human rights abuses may have occurred. Stakeholder engagement also reinforces our capacity to leverage the power of mediation and dialogue. These involve “trust” principles as outlined in the international documents that guide the Ombud function around the world – taking deliberate action to ensure that all sides see our work and our approach as fair, impartial, transparent, and accountable.

### **Lessons Learned**

Since our inception, the CORE has reached out to stakeholders, and we have learned lessons along the way. We are not experts on consultation processes but we've learned by doing. The following is a brief summary of some of our main lessons learned.

We have learned that consultation is an ongoing process – not one that ends once an official process has concluded. It is important to continue to engage and remain receptive to feedback. This involves meeting regularly with key stakeholders to exchange updates and seek their views on different issues. The constant feedback helps us grow and remain primed for purpose.

We have learned that maintaining strong relationships with stakeholders is fundamental to the CORE's mandate. It is important that they know that the Ombud is available and accessible and that they can come to us with relevant concerns. This is key for an Ombud office. But that relationship can only be developed if there is trust – trust in stakeholders knowing that if they provide suggestions or raise a concern, that they will be listened to. That is the essence of meaningful consultation.

In 2022, the CORE concluded a consultation process on a risk assessment process to use when planning visits to countries. Civil society stakeholders emphasized the importance of considering the potential risks to the safety of local actors related to meeting with the CORE, and the need for the CORE to assess these risks before engaging locally. We learned from our

Global Affairs Canada colleagues the importance of liaising with the Canadian embassy to facilitate logistics with regard to visit planning; and that Canadian missions abroad can be an important resource for our work.

The COVID-19 pandemic taught us about the need to be adaptable in how we engage. We adapted quickly from in-person consultation to hybrid and fully virtual. This versatility has allowed the CORE to improve accessibility, engaging many more people in our processes. We now regularly meet virtually with people across Canada and the world. We recognize that in some regions, people may face barriers to accessing technology. The CORE is working to address those issues.

Finally, we have learned that a concept can mean different things to different stakeholders. For example, in our listening tour, stakeholders emphasized the importance of fairness. But what fairness looks like to our private sector stakeholders may not necessarily be the same for our public and plural stakeholders. Where plural stakeholders saw fairness as facilitating access to remedy and addressing power imbalances through CORE's complaints mechanism, private sector stakeholders focused on the handling and disclosure of confidential information during the review process and on potential adverse impacts of the review process on companies or organizations. As an Ombud office, it is our job to balance these understandings and expectations.

### **Good Practice**

Our consultation efforts continuously provide knowledge, insight, and lessons that allow us to constantly adapt, improve, and hone our operations. The following is a brief summary of the CORE's suggested good practice with regards to stakeholder engagement.

**Make sure to properly allocate time for a consultation process.** This involves allocating enough time for consultations and avoiding holiday periods. It is also helpful to set a generous timeframe for responses – requesting input as much in advance as possible allowing stakeholders the ability to plan and respond in a timely manner.

**Clearly outline the request.** In reaching out to stakeholders for input, it is important to clearly outline both the specific details of the request, as well as a timeline for response. If looking for comments on a specific portion of a document, it helps to clearly indicate either a page number or a section in the body of the email. The more the request is simplified, the better the chances that your counterpart will reply.

**Highlight the 'why'.** When consulting stakeholders, it is important to clarify the specific expertise for which the stakeholder is being contacted, and what value the document/product/conversation will add to the work. For example, in our listening tour, we made it clear to the people with whom we spoke that their viewpoints would help the CORE shape priorities and inform our approach. As our first conversation with our stakeholders, this consultation process was crucial. Since we made the value of the conversation clear to our counterparts, they were often more than happy to speak with us.

**Respond to feedback received during consultations.** In our various consultations, we received considerable feedback on our products. To the best extent possible, we attempt to respond to the comments received to indicate how feedback is being addressed and incorporated into our work.

## **Conclusion**

This note aims to convey an understanding of the importance of stakeholder engagement and applying good-practice principles customized to specific groups. From the launch of the CORE to the present day, meaningful stakeholder engagement continues to be key to the effective execution of the CORE's mandate. It involves better listening, accepting limitations, and integrating feedback received. It is a continuous consultation process, rather than one or more isolated or stand-alone events. Underlying this is the critical importance of building and maintaining trust. These involve “trust” principles as outlined in the international documents that guide the Ombud function around the world – taking deliberate action to ensure that all sides see our work and our approach as fair, impartial, transparent, accountable, and accessible. Ineffective engagement can lead directly to negative human rights impacts due to a failure to address stakeholder and adversely impacted groups concerns early and effectively before they escalate.

While standards related to stakeholder engagement have been widely adopted, the experience and practice with different groups varies. Stakeholder engagement includes ongoing analysis and consideration of opportunities and risks. In order to be meaningful, stakeholders' concerns and recommendations should be considered in design, decision-making, and implementation. Our insights have taught us, with humility, that we are often not the experts in the room.

I am grateful for the opportunity to share my ongoing observations and learnings. Hopefully, the sharing and exchange of insights and information on such an important matter as human rights remediation in some way makes a difference.

## **Notes**

- 1 See [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/mandate-mandat.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/mandate-mandat.aspx?lang=eng).
- 2 See [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).
- 3 See <https://www.oecd.org/daf/inv/mne/48004323.pdf>.
- 4 See [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e).
- 5 [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/listening\\_tour-tournee\\_consultations.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/listening_tour-tournee_consultations.aspx?lang=eng).
- 6 [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/operating\\_procedures-procedures\\_exploitation.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/operating_procedures-procedures_exploitation.aspx?lang=eng).
- 7 [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/COREs\\_approach\\_retaliation-approche\\_OCRE\\_represailles.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/COREs_approach_retaliation-approche_OCRE_represailles.aspx?lang=eng).
- 8 [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/risk\\_mang\\_proc\\_eval.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/risk_mang_proc_eval.aspx?lang=eng).
- 9 [https://core-ombuds.canada.ca/core\\_ombuds-ocre\\_ombuds/rights\\_child\\_labour-droits\\_enfant\\_travail.aspx?lang=eng](https://core-ombuds.canada.ca/core_ombuds-ocre_ombuds/rights_child_labour-droits_enfant_travail.aspx?lang=eng).

# 11

## REFLECTIONS ON THE CONTEXT AND IMPLICATIONS OF THE TRANSITION FROM CANADA'S EXTRACTIVE SECTOR CORPORATE SOCIAL RESPONSIBILITY COUNSELLOR TO THE CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE

*Jeffrey Davidson and J. Andrew Grant*

In December 2017, Canada's Extractive Sector Corporate Social Responsibility (CSR) Counsellor was called into the offices of the Minister of International Trade to meet with his senior advisor. The advisor informed the Counsellor that the Government had decided to shut down the Office of the CSR Counsellor and replace it with a new oversight and investigative framework, to be called the Canadian Ombudsperson for Responsible Enterprise (CORE), with a focus limited to company human rights abuses and remedies for complainants whose allegations of abuse could be confirmed (see Meyerhoffer, 2024).

In contrast, the CSR Counsellor had taken a proactive and preventative approach as opposed to a reactive one, with the aim of:

- improving Canadian companies' social and environmental performance at their exploration and operating sites;
- minimizing risks of conflict or harm between companies and host country communities;
- creating opportunities for strengthening direct company-community engagement; and
- fostering participatory forms of development.

Several chapters in this volume (e.g., Buhmann et al., 2024; Eke et al., 2024), emphasize that proactive engagement, such as that which underpinned the above aims, also cultivates – and can ultimately establish – trust among stakeholders.

The CSR Counsellor was guided by Canada's 2014 Extractive Sector CSR Strategy, *Doing Business the Canadian Way*,<sup>1</sup> and its six endorsed international standards.<sup>2</sup> Their norms and values provided the basis for the Counsellor's Office efforts: a) to strengthen its advisory role by extending its outreach to companies, host countries, and affected communities alike; b) to implement a range of "early detection" efforts, including monitoring and investigation into questionable company conduct; and c) to identify potential or actual conflict situations which might merit actual interventions, mediation, or the imposition of punitive measures. These measures could include public "naming and shaming" of a company's conduct or even withdrawal or suspension of Trade Commissioner or other agencies support. However, in its three years of operation the Office never reached the point of recommending or undertaking punitive measures.

Given that there was an explicit expectation on the part of the Government of Canada that companies would align their conduct with its endorsed international standards, the Councillor's Office responded to this challenge in four different ways:

- 1 It decided not just to wait to receive formal complaints, but would initiate visits to selected projects in countries where there was a significant Canadian presence. The Office would undertake its own "in the field" preliminary evaluation of the company-community-government and broader civil society situations and relationships and determine how such relationships and the company's social performance could best be improved. The Councillor was often accompanied by Embassy staff (Trade Commissioners, and/or the Ambassador him/herself), which enabled them to develop a deeper understanding and appreciation of what happens on the ground. Understanding the current and past social, environmental, political, and economic country context in which the Canadian companies and other Canadian actors were operating was critical to being able to identify constructive avenues for more positive engagements as well as possibilities for dispute resolution between companies, communities, and other rights holders. The Councillor visited Panama, Guatemala, Honduras, Colombia, Argentina, Peru, Tanzania, South Africa, Namibia, and Ghana, including missions to 11 active mining sites and one closed site, and their surrounding affected communities.
- 2 For those operations visited, the Councillor followed up with the companies' senior managers to discuss observed gaps and issues in social performance that should be resolved and improvements that should be made.
- 3 It drafted and published a targeted CSR Navigation Tool in English, French, and Spanish to help stakeholders more easily identify those elements of the endorsed international standards relevant to their own situations, with the aim of allowing stakeholders to more effectively address compliance issues and performance challenges.<sup>3</sup>
- 4 It issued three Annual Reports to Parliament, along with two country studies (Honduras and Panama), which explained the Office's working approach and summarized or provided detailed analyses of the situations encountered in the countries and sites visited. These works also shared learnings and identified key areas for improved practice – not only of Canadian companies, but also of Canadian government institutions and Canada-based NGOs operating in these environments.<sup>4</sup>

Nonetheless, the Government publicly announced in mid-January 2018 its decision to change over to a different Ombudsperson model. The CSR Councillor's Office was shut down in mid-May 2018. However, it was not until April 2019 that the new Canadian Ombudsperson for Responsible Enterprise was appointed. For whatever reasons, the Councillor's final



2017–2018 Annual Report, submitted to the Minister in May 2018, was only tabled to Parliament after the appointment of the new Ombudsperson.

There was by no means a smooth transition from one office to the other; it turned out to be more problematic than initially anticipated.<sup>5</sup> For instance:

- 1 The operational gap actually extended from the announcement of the closure of the CSR Counsellor's Office in January 2018 to well beyond the appointment of the Ombudsperson with CORE only becoming fully functional in early 2021.
- 2 Advocacy NGO stakeholders felt that the new framework, as it was mandated, would neither strengthen governance outcomes that would provide for more effective fact-finding relating to company human rights abuses nor establish the basis for providing actual “remedy” to aggrieved parties (see Keenan, 2020).

This changeover meant, in the short term, a movement away from the Government's broad-based and proactive approach to promoting responsible business conduct across a range of environmental, social, and governance (ESG)<sup>6</sup> areas – including human rights due diligence (HRDD). Instead, it adopted a more limited approach focusing on the recognition, reaction to, and elimination of potential and actual human rights abuses by Canadian companies operating abroad.

### Notes

- 1 Available at [https://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced\\_CS\\_Strategy\\_ENG.pdf](https://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf). Several contributors to Andrews and Grant (2020) examine the Office of the CSR Counsellor and the Canadian Ombudsperson for Responsible Enterprise – as well as the recent evolution of CSR policies (and these institutions) advanced by the Government of Canada. See also Davidson (2020).
- 2 Including the International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability, the Voluntary Principles and Security and Human Rights, the Global Reporting Initiative for extractive sector CSR, the OECD Guidelines for Multinational Enterprises, the United Nations Guiding Principles on Business and Human Rights, and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.
- 3 See: [https://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/csrnt-gnrse.aspx?lang=eng](https://www.international.gc.ca/csr_counsellor-conseiller_rse/csrnt-gnrse.aspx?lang=eng).
- 4 The first two reports are available at [https://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/resources-ressources.aspx?lang=eng](https://www.international.gc.ca/csr_counsellor-conseiller_rse/resources-ressources.aspx?lang=eng) and the final, third report is available via the author's academic website: [https://www.academia.edu/39503773/Office\\_of\\_the\\_Extractive\\_Sector\\_Corporate\\_Social\\_Responsibility\\_CSR\\_Counsellor\\_2018\\_Annual\\_Report\\_to\\_Parliament](https://www.academia.edu/39503773/Office_of_the_Extractive_Sector_Corporate_Social_Responsibility_CSR_Counsellor_2018_Annual_Report_to_Parliament).
- 5 The Counsellor had actually offered to work with the Minister's office to ensure a smooth transition to CORE and remain beyond the closure of the Counsellor's Office on a month-by-month basis as needed. The offer was not accepted.
- 6 For a detailed examination of the evolution of environmental, social, and governance (ESG) indicators — and how ESG rating influence the behaviour of mining companies and the decisions of investors — see Fikru et al. (2024).

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# 12

## CONSULTATION AND MULTI-LEVEL MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE NORWEGIAN SAMI AREAS

*Ola Mestad*

### **Introduction**

Let me begin with a story that my father told me. In the second half of the 1950s, he was an assistant judge at the district court in Tana, covering the core Sami areas in Finnmark. Over several years, the court had called on a prominent Sami reindeer owner to meet at the court to give a statement related to a pending court case. However, he never showed up. My father decided to try a different approach and traveled the long journey to where he had been told the reindeer owner would be. He was greeted politely and invited in and asked to take a seat on the reindeer skins on the ground. Then the reindeer owner started questioning my father. How old was he (26), where did he grow up, what had his parents done for a living, did he have a wife and family? My father replied, I think, extensively, and explained about himself – that he was the son of a butcher – and about his background. The reindeer owner said: “Now you ask!”, instructing the guest how to do the right thing. By now, my father had understood the cultural code and asked the same questions back, while at the same time avoiding the delicate issue of how many reindeer the owner had. After this exchange and the serving of coffee, my father turned to the business at hand. And, without any difficulties, the reindeer owner gave his explanation about what had happened in the case, and this was put into writing.

What can this story teach us about meaningful stakeholder engagement? First, that it may be important to meet the stakeholder on his or her home turf, not just request them to meet at the courthouse, which, in the case of the Sami, represents the mainstream Norwegian society. Second, to accept the manner in which conversations are performed, such as sitting on the reindeer skins. Third, to show deference to the old and, in his own society, important man. Fourth, to understand, accept and follow the local custom to get to know one another before addressing the real issue why you are there. If you do this, you will be able to create the basis for an exchange on an equal footing with the stakeholder.

In this chapter, I will undertake an analysis of the Norwegian legislation and law on consultation with Sami people from the perspective of meaningful stakeholder engagement. Since June 2021, the Norwegian Sami Act has had a new chapter on consultations. This was enacted after extensive work and on the basis of experience from a previous consultation agreement between the Norwegian government and the Sami Parliament. Further, on the legislative front, there is another important recent development: In 2022, a draft Minerals Act was presented with sector-specific rules on consultation with Sami people in a field which may be very important for Sami interests.

The development of these consultation rules has two important backgrounds. One background is “national” or, rather, local: the awakening of Sami rights awareness, closely linked to the Alta Dam case in the 1970s and 1980s and including specific legislation on Sami rights. The other background is international: the adoption of the International Labour Organisation (ILO) Convention No. 169 on Indigenous and Tribal Peoples in 1989 and the development of the protection of indigenous peoples under Article 27 of the 1966 UN instrument, the International Covenant on Civil and Political Rights (ICCPR).

Consultation issues have also been addressed by the Norwegian Supreme Court in several Sami-related cases, most prominently in the recent Fosen Case. In this case, Sami reindeer herding interests versus wind farming were decided upon by the Grand Chamber of the Supreme Court. The six wind farms on the Fosen peninsula constitute the largest onshore wind power project in Europe. The two Sami siidas (reindeer herding communities) who had challenged the decisions to build the wind farms won the case. The Court found that the licenses to establish wind farms partly in the reindeer areas were invalid since they violate Article 27 of the ICCPR, which is applicable as Norwegian law through the Norwegian Human Rights Act of 1999. The chapter will not fully cover this important decision, but will focus on the aspects relating to meaningful stakeholder engagement.

The next section describes the legislative and international law background mentioned above while the following section analyzes the consultation rules of the Sami Act. Thereafter, the rules of the Sami Act are compared with the consultation rules of ILO No. 169. Next, other relevant consultation rules in Norwegian law, including some cases from the Supreme Court, are discussed. Subsequently, the further development of consultation rules as proposed in a new draft Minerals Act are analyzed. A separate section is devoted to the Fosen Supreme Court case, with special emphasis on the reasoning related to consultation based on ICCPR Article 27. In the final section, conclusions are discussed and drawn.

The relationship between law-based consultations and traditional meaningful stakeholder engagement is fluent. As set out in the UN Guiding Principles for Business and Human Rights (UNGPs), states have a duty to protect human rights while businesses have a responsibility to respect them (but not a legally binding obligation). The thinking about meaningful stakeholder engagement has mainly been developed with respect to the corporate responsibility to respect human rights (Buhmann et al., 2024; OECD, 2017a<sup>1</sup>).

However, the corporate responsibility to respect human rights is especially important where there is a governance gap because the state responsible has not fulfilled its own human rights obligations. The more a state fulfills its obligations to protect human rights, for example through legislation on consultations to enable affected stakeholders to become involved in decision-making, the more important it is to analyze consultation rules and practices through the lens of meaningful stakeholder engagement. This chapter undertakes such an analysis.

In well-functioning states, formal consultations are common. With respect to consultations and meaningful stakeholder engagement in general, three core questions should be addressed:

- When (in what situations and at what stage of a process) should engagement or consultation be undertaken?
- What should the content of the engagement or consultation be?
- What should the outcome of the process be?

All of these will be addressed below with respect to consultations.

### **The Constitutional protection of Sami culture, the Sami Act, the ICCPR Article 27 and the ILO Convention No. 169**

To understand the background for the extensive legislation on consultation with respect to Sami rights, it is necessary to consider the overall approach to Sami rights in Norwegian law, on the constitutional level as well as in several important legislative acts, including the Human Rights Act, which makes the ICCPR applicable as supreme Norwegian law.

The full wording of Article 108 of the Norwegian Constitution is as follows:

“The authorities of the state shall create conditions enabling the Sami people, as an indigenous people, to preserve and develop its language, culture and way of life.”

The provision was adopted in 1988 (as Article 110 a) and was part of an acceptance and realization by Norwegian society that the Sami people had been mistreated and should receive special recognition in the Constitution as well as in the general legislation (Bull, 2021). Article 27 of the ICCPR served as an important model for Article 108 of the Constitution, even if the former is a general provision on minority rights (Skogvang, 2013, p. 205; Supreme Court of Norway, 2017a, para. 118). In 2023, the phrase “as an indigenous people” was added to the wording. All three aspects of Sami interests – language, culture and way of life (in Norwegian, “sitt språk, sin kultur og sitt samfunnsliv”), – are covered. An important feature of Article 108 is that the Sami people itself shall be given the opportunity to preserve and develop its culture. This is directly relevant to consultations about Sami interests. Since the Sami people live in most parts of the country, although especially in Finnmark and other northern counties, activities and projects organized by institutions or organizations in these areas may easily interfere with Sami interests. Therefore, consultation becomes an important means for protecting Sami interests. The Sami Act was adopted in 1987, one year before Article 108 (as Article 110a at the time) of the Constitution, both initiatives being part of the same wave of awakening and recognition of Sami rights. As noted, the consultation provisions of the Sami Act were only added in 2021.

ILO Convention No. 169, on Indigenous and Tribal Peoples, was developed and adopted in 1989. Norway was the first country to ratify the convention in June 1990. As of 2024, still only 24 states have ratified it. Of the Nordic countries, only Denmark and Norway have ratified the convention, The other countries with Sami populations, i.e., Sweden, Finland, and Russia, have not.

In 2021, a formal link between the ILO Convention No. 169 and the Sami Act was established. While Section 1-1, subsection 1 on the purpose of the Sami Act basically has the same wording as Article 108 of the Constitution, a new paragraph was added to Section 1-1 as part of the adoption of the chapter on consultation. The new subsection 2 has the following wording “The Act applies with the reservation of what follows from ILO Convention No. 169 on

Indigenous and Tribal Peoples in Independent Countries. The law should be applied in accordance with the rules of international law on indigenous peoples and minorities” (Author’s translation).

The preparatory works for the law emphasize that this additional paragraph will be particularly relevant for the application of consultation requirements, since they have been drafted very much with the intent of shaping Norwegian law in line with Norway’s international obligations.

Going back to 1966, ICCPR is an older and much more widely ratified international treaty than ILO Convention No. 169. Article 27 of the ICCPR has been very relevant in the case law and other practices of Norwegian courts and which has served as a basis for the introduction of consultation requirements in Norwegian law. The wording of Article 27 is:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

This is a general provision on minority protection not specifically addressing Indigenous rights. In Norwegian law, however, it has been important with respect to consultation rights for the Sami as well as with respect to establishing substantial rights protection.

The relationship between international law instruments and conventional Norwegian law is complex. As just mentioned, Article 108 of the Constitution partially has an international law background. Further, the Norwegian Human Rights Act of 1999 lists some core conventions, giving them force as Norwegian legislation as well as stipulating that the listed conventions “shall take precedence over any other legislative provisions that conflict with them”. Accordingly, they are *lex superior* to ordinary legislation (meaning that they have a higher legal status), but inferior to the Constitution itself (Norwegian Parliament, 1999, section 2 and 3). One of the listed conventions is ICCPR. The ILO Convention, however, is not accorded this general status. This places the ICCPR at a higher level in Norwegian law.

In Norway, the courts will also give substantial weight to decisions and opinions by international bodies tasked with issuing interpretations and deciding complaints related to relevant conventions. With respect to Sami rights, as we shall see below, the UN Human Rights Committee plays a particularly important role in this regard, since the committee also issues opinions based on complaints from individual private parties. Such cases are better suited to inform court decision-making than mere general comments.

The following section turns to the consultation provisions of the Sami Act.

### **The Consultation Provisions of the Sami Act**

Before the consultation chapter was added to the Sami Act in 2021, an agreement between the government and the Sami Parliament on consultations entered into force on 11 May 2005.<sup>2</sup> The preface to the agreement was:

As an indigenous people, the Sami have the right to be consulted in matters that may affect them directly. In order to ensure that work on matters that may directly affect the Sami is carried out in a satisfactory manner, the Government and the Sami Parliament agree that consultations between State authorities and the Sami Parliament shall be conducted in accordance to [sic] the annexed procedural guidelines.

The agreement regulated consultations between the government and the Sami Parliament only in terms of an obligation to notify and discuss with the Sami Parliament if state authorities were planning to consult other Sami entities, such as “local Sami communities and/or specific Sami entities or interests that may be directly affected by legislation or administrative measures”.

The agreement and the experience thereunder form an important background for the consultation provisions of the Sami Act.<sup>3</sup>

Since 2021, the Sami Act chapter 4 contains ten sections on consultation. Section 4-1 establishes in which cases consultations should be undertaken. The chapter applies to legislation, delegated legislation and other decisions and projects “which could influence Sami interests directly”. State budget issues are exempted. Subsection 3 has a lower threshold for consultation when it comes to projects and decisions that are planned and executed in “traditional Sami areas, or which may affect the exercise of Sami material culture in traditional Sami areas”.

A special exemption follows from subsection 4 with respect to cases where the Sami parliament has a right to raise objections according to the general Plan and Building Act.

Who has the right to be consulted? That is the Sami Parliament and “other representatives for affected Sami interests” (Section 4-2).

Who has the duty to consult? That is the government, the ministries, directorates and other government entities. Further, it is also government enterprises as well as private enterprises exercising public authority on behalf of the state (Section 4-3). Also, counties and municipalities which are local government bodies have a duty to consult “representatives of affected Sami interests” in cases about local legislation and other decisions and projects that may “directly affect Sami interests” (Section 4-4).

Notification of cases that may be subject to consultations is regulated in Section 4-5. The main rule is that those who have a duty to consult also have a duty to notify the Sami Parliament and others with a right to be consulted. If no notification is given, the Sami Parliament may, on its own, ask for consultations in such matters. The Sami Parliament and others with a right to be consulted must reply with respect to whether they want consultations in the case at hand. Also, the Sami Parliament may give its opinion about whether others should be consulted in the case.

With respect to the topic of this book, meaningful stakeholder engagement, the main provision is Section 4-6 on the “Content and purpose of the consultations”. The full provision reads:

Consultations shall be conducted in good faith and with the purpose of reaching agreement. The body that has the consultation duty shall give full information about all relevant issues (Norwegian: “forhold”) on all points of time in the handling of the case.

The consultations shall start so early that the parties have a real possibility to reach agreement about the decision.

The consultations shall not be brought to an end as long as the parties assume that it is possible to reach agreement about the case.

Section 4-7 states that a protocol should be set up from the consultations. It must state what the case is about, “the assessments and positions of the parties as well as the conclusions in

the case”. If agreement is reached, this must be clearly stated. The provision also notes that the assessments of the Sami party shall follow the case “until a final decision is reached”.

The remaining provisions of the chapter empower the government to issue regulations on consultations. This has, as of now (March 2024), not yet happened. Further, there is a very vague provision on the effect of violations of the rules on consultations. Violations may lead to invalidity “in accordance with general principles of administrative law”. Finally, it is said that the rules on consultation apply in parallel with the provisions of the General Public Administration Act and other provisions in legislation regarding Sami interests.

As can be seen from this brief overview of the rules on consultation, they constitute a broad set of rules, covering situations that may affect Sami interests directly (Section 4-1 subsection 1), as well as more indirectly (Section 4-1 subsection 3).

The next section considers how this compares with the requirements of the ILO Convention No. 169.

### **The Relationship between the Consultation Rules of the Sami Act and ILO No. 169**

ILO Convention No. 169 contains three articles related to consultation: Articles 6, 7, and 15. The latter specifically addresses some natural resource issues.

Article 6 stipulates a duty to consult. Governments shall “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly” (section 1(a)). Further, governments also have a duty to make consultations possible. They shall “establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them” (section 1(b)).

The important main rule with respect to the purpose and content of the consultations is set out in Article 6, section 3. Consultations shall be “undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”.

Article 7 first sets out a rule on self-government and adds that the peoples concerned “shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly” (section 1).

Second, a rule on participation is stipulated in Article 7, section 2, where it says that governments;

shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

It is the general interpretation that Articles 6 and 7 should be understood together (NOU, 2007: 13 B, p. 854).

With respect to specifically safeguarding Indigenous Peoples’ lands, Article 15 stipulates that this particularly relates to the use, management, and conservation of the natural resources



pertaining to lands where there are special rules with respect to state ownership of minerals and other sub-surface resources. In such cases;

governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.

It is evident that this is a special rule on consultation.

In connection with development of mining, etc., it is also important to mention the special rule in Article 15, section 2, with respect to the economic effects of this: “The peoples concerned shall wherever possible participate in the benefits of such activities and shall receive fair compensation for any damages which they may sustain as a result of such activities.”

When comparing the rules on consultation of the Sami Act with the ILO Convention, it seems quite clear that the Sami Act rules cover the same issues as the convention, however in more detail. If we compare the Sami Act Section 4-6 as quoted above with Article 6, section 2, of the convention, the Sami Act gives more support to the substantive content of the consultations. Below, we will return to this comparison and discuss how the provisions support meaningful stakeholder engagement. First, the next section examines more traditional administrative law planning requirements and how they relate to Sami interests, as well as other applications of consultation rules and how such issues have been decided by the Supreme Court.

#### **Other Consultation Rules: Impact Assessments in Planning and Building Law; Consultation Based on Article 27 ICCPR**

Norway has an advanced planning and building legislation which includes requirements for impact assessments. The former rules with respect to public participation, including Sami rights, are covered in Mestad (2002). The starting point is that the Planning and Building Act, which is the basis for the impact assessment rules, has as one of its purposes to safeguard the nature foundation for Sami culture, industry, and society (Section 3-1 c). The Planning and Building Act (section 5-4 subsection 3) also gives the Sami Parliament a specific right to raise objections against plans relating to questions that are of substantial interest for Sami culture or industry (see also Eriksen, 2023, pp. 25–28). The Sami Parliament also has a right to raise complaints with respect to administrative decisions and a duty to, if necessary, participate in planning activities (Sections 1-9 subsection 3 and 3-2 subsection 3).

The Norwegian Impact Assessment Regulation (2017) Section 10, which regulates factors that should be assessed before a plan decision is made, includes the effects for Sami land use and reindeer husbandry (subsection 3b). Further, Section 21 lists factors that should be identified and described in an impact assessment, including Sami nature and culture foundations.

Section 21 subsection 2 also stipulates the important rule that impact assessments shall include all effects of a plan or project, including already existing ones as well as projects which have been approved. Where reindeer husbandry interests are affected, the total effects of plans and projects for the reindeer-herding district shall be assessed.

In the Impact Assessment Regulation, there is a specific provision on methodology, sources, and uncertainty (Section 22). However, there is no indication that consultation is a required method. Ordinary administrative hearings of the proposal are the main way to

involve different interested parties. But these do not contain the more specific requirements on meaningful stakeholder engagement that advanced consultation rules typically do.<sup>4</sup>

Some Supreme Court decisions give an idea of how the impact assessment rules and the consultation rules work in relation to Sami rights. One of these is on planning and building permits; another on management of reindeer herding. In the *Reinøya* (literally the reindeer island) case from 2017 (HR-2017-2247-A), there was a question of whether an impact assessment should have been undertaken with respect to a road and tunnel project that would affect reindeer herding (Supreme Court of Norway, 2017a). A majority of three judges found that there was no formal requirement for a full impact assessment because the project was too small, and that the impact *analysis* which had been undertaken was sufficient under the Planning and Building Act. A minority of two judges, however, found that the analysis that had been undertaken was not thorough enough and voted for invalidation of the regulation plan of the project

Further, the court assessed whether the project violated Sami rights under Article 27 of the ICCPR. On that question, both the majority and the minority found that Article 27 was not violated after an analysis based on cases from the UN Human Rights Committee (Supreme Court of Norway, 2017a, paragraphs (117)–(134) and (150)).

On this matter, the majority of the Court observed with respect to consultations: “Furthermore, according to the [Human Rights] Committee’s case law, it is relevant if, and to which extent, the minority has been allowed to speak and be included in the process.” This was the case. The judge continued: “As I have already demonstrated, representatives of the reindeer industry have also been given the opportunity to present their views. This has taken place in writing, at meetings and during inspections” (Paragraph 121). In relation to the topic of meaningful stakeholder engagement, it is important that the Court emphasized that the reindeer herders had had the opportunity to present their views, and that they actually did so. In this case, the ordinary legislation apparently offered better protection than the consultation rights derived from the ICCPR Article 27.

Later in the same year, the Supreme Court decided the so-called *Reindeer cull I* case (HR-2017-2428-A). In that case, the Supreme Court referred to the *Reinøya* case paragraph 121 (quoted above) as acknowledging a duty to consult. In the *Reindeer cull I* case, the question was more precisely what the impact of that duty was (Supreme Court 2017b, paragraph 72).

In this case, the right to consultation was discussed in an interesting way, because there was no united Sami opinion on the question of the allocation of the reduction of the total amount of reindeer in an area due to necessary grazing restrictions. In the case, the right to consultation followed from the ICCPR Article 27 since the case did not concern a planning issue, but reduction of the reindeer flocks under the Reindeer-herding Act (Norwegian: *reindriftsloven*) of 2007. First, with respect to consultations, it should be mentioned that in the preparatory works for the Reindeer-herding Act of 2007, seven formal consultations between the government and the Sami Parliament had taken place. These were undertaken according to the Consultation Agreement from 2005, mentioned above. A majority of the Supreme Court opened their decision by stating,

When assessing whether article 27 has been violated, it is crucial to identify whether the minority «has had the opportunity to make a statement and been included in the process», see the Supreme Court judgment HR-2017-2247-A para 121. Hence, the authorities have a *duty of consultation*, and the question is what this duty actually entails.

(Paragraph 72)

After assessing the lower court's decision and the understanding of the sources, the majority of the Supreme Court (4 out of 5 judges) continued:

In General Comment no. 23 item 7, the Human Rights Committee states that “measures [are required] to ensure the effective participation of members of minority communities in decisions which affect them”. A similar wording is used in the *Mahuika* [UN Human Rights Committee] case para 9.5. Against this background, I conclude there is a requirement for effective participation by the minorities.

Further, the majority looked to the Norwegian Sami Law Commission's understanding of the matter: “As stated by the Sami Law Committee in NOU 2007:13 *The new Sami law* on page 207, the implications of such participation will vary in each case.” Then the majority of the Court stated an understanding of what this could imply:

In a case primarily concerning conflicts of interest between individuals or groups within the minority, I do not see a basis for requiring that the minority has actually influenced the decision. It must be sufficient that the minority has been consulted due to a wish to come to an agreement.

(Paragraph 75)

This case illustrates an important aspect of consultation: That there may be differing opinions within the minority; in this case the Sami people involved in the case. This implies that not all opinions expressed during the consultations may influence the final government decision. On the other hand, the dissenting judge of the Supreme Court still found a violation of Article 27, even if he recognized that the issues are different when opinions are divided within the protected minority. See Supreme Court 2017b paragraphs (131) and (132).

In both these Supreme Court cases, the requirement for consultation was based on Article 27 of the ICCPR, not on the ILO Convention No. 169. At the same time, we see the interplay between the respective ordinary acts of legislation and the protection afforded by the ICCPR. To fully understand the system for and the requirements of consultation, it is important to see the total picture of the national and the international sources, including how the international sources have been implemented in national law. The status of the ICCPR as supreme Norwegian law and the illustrating cases from the UN Human Rights Committee are probably the main reasons why Article 27 takes such a prominent place in Norwegian practice. The ILO Convention No. 169 does not have the same status in the Norwegian legal system as the ICCPR since it is not, as mentioned above, included as part of the Norwegian Human Rights Act of 1999.

### **The Consultation Rules of the Proposed Minerals Act**

The development of consultation rules with respect to Sami rights is continuing. A report proposing a new Minerals Act was presented to the Ministry of Trade and Fisheries on 1 July 2022 (New Minerals Act, 2022). It contains an extensive discussion on how to address Sami interests and rights, including ambitious consultation rights and duties. One reason for this is that the large areas in the most important Sami county, Finnmark, are assumed to contain important minerals. In recent years, there has been little development on the mining front. This is, according to the Mineral Law Commission, partly due to the complex and disputed

rights of the Sami people which have led to a reluctance on the part of foreign investors, financial institutions and buyers of minerals to spend money on projects in Sami areas (New Minerals Act, 2022, p. 103). One important factor may be that the Sami Parliament has consistently held that it does not recognize the existing Minerals Act of 2009 as a legitimate basis for handling minerals cases. That is so even if the 2009 Act also has some special provisions with respect to Sami interests (Sections 2, 17 and 18 of the Act).

One example of the reluctance, not explicitly mentioned by the Commission, is the disputed large copper mine project in Repparfjord, Kvalsund, Finnmark. The company Nussir ASA got a license in 2019 to develop a mine. The license was granted despite protests from reindeer herders in Finnmark because of interference with reindeer tracks, and protests from environmentalists because of the planned dumping of tailings in the fjord (this is the case mentioned by Buhmann (2023a, 2023b, at footnote 79). In 2021, media reported that the German intended buyer of copper, Aurubis, who had entered into a 10-year Memorandum of Understanding worth 10 billion NOK for the entire production from Nussir, had withdrawn from the agreement due to its assessment of corporate responsibility. Aurubis stated:

Since the signing, Aurubis has regularly reviewed the progress on site within the context of CSR (corporate social responsibility) due diligence. In the process, the company had to realize that, in addition to commercial conditions, certain social aspects of the project need to be given even greater consideration. Aurubis and Nussir have therefore made the decision to now terminate the memorandum of understanding.

(E24, 2021; and Aurubis, 2021)

It is not explicitly stated that the “social aspects” mentioned relate to Sami issues, but that is the logical interpretation. In discussions and regulations of responsible investment, the term “social” is often intended to include human rights issues, as in the abbreviation ESG (Environment, Social, Governance) (Nystuen, Follesdal & Mestad, 2011, p. 4). It is also interesting in itself that it was the buyer’s exercise of due diligence that led to the decision to withdraw from the project. Normally, human rights due diligence should include stakeholder engagement, including with affected stakeholders (see also Buhmann et al., 2024). Further, the approval for construction work at the site was withdrawn by the County Governor in the Spring of 2022 (Naturvernforbundet, 2022).

This brings us to the new proposal on consultation in the Minerals Act which was also informed by the Supreme Court judgment in the Fosen case, which will be discussed in the next section of this chapter. The proposed Section 1-1, relating to the purpose of the act, stipulates that the management of mineral resources shall, inter alia, be done in consideration of the nature foundation for the exercise of Sami culture. Something similar is stated in Section 2 of the current Minerals Act. There are five explicit provisions on Sami issues in the draft chapter 2, which contains the general provisions on mineral activities. Section 2-7 requires that exploration and exploitation in “traditional Sami areas” can only be undertaken based on agreement with the rights holders in the area or expropriation according to law.

With respect to the discretionary award of licenses for exploration and exploitation in traditional Sami areas, it is mandatory to consider the effect of the project on the Sami exercise of culture. This should be considered in conjunction with other executed and planned projects in the area (Section 2-8 subsection 1). When consultations have been undertaken, the administration shall take into account whether agreement has been reached. When there is no agreement, the administration shall take into account factors relating to the Sami exercise

of culture having been identified in the consultations (Section 2-8 subsection 2). No license may be awarded if the total assessment of the relevant factors shows that the project will have “substantial negative effects for the nature foundation for the exercise of Sami culture”. This rule can be exempted from if the project owner has entered into agreement with the affected siidas, and the agreement has been approved by the Sami Parliament (Section 2-8 subsection 3).

The consultations as such are regulated in Sections 2-9 and 2-10. Section 2-9 lists four important decisions in the progress of a mining project and requires consultations to be undertaken before decisions are made if the project may affect the nature foundation of the exercise of Sami culture in traditional Sami areas. Those who have the right to be consulted are the Sami Parliament and affected rights-holders. According to Section 2-10, consultations must be undertaken as stipulated in chapter 4 of the Sami Act, which was introduced above, unless anything else is stipulated in the Minerals Act itself.

Section 2-10 of the proposal stipulates that when consultations shall be undertaken with respect to several of the decisions listed in Section 2-9, the consultations shall be coordinated as far as possible. Further, when consultations shall be undertaken in accordance with the Planning and Building Act or the Pollution Act, related to mining projects, the authorities must ensure that the consultations are carried out in an efficient and coordinated manner. Section 2-11 requires that private parties responsible for relevant projects shall translate relevant important documents into Sami language if the affected Sami rights-holders request it.

As this shows, the regulation of the content of the consultations follows from chapter 4 of the Sami Act, while the proposed minerals act introduces the consultations into the system of mining licensing and approval. It is especially important that consultations that do not lead to an agreement may block a development. Further, there is an important veto power for the Sami Parliament proposed in Section 2-8 subsection 3.

Another feature of the proposed Minerals Act is Section 10-6, which stipulates that the relevant Sami entity shall have full compensation for any losses related to their use of land due to minerals development. This is in accordance with existing law. An important new proposed set of provisions on economic project benefits, however, stipulates that the Sami rights-holders and the Sami Parliament shall receive part of the economic benefits generated by the mining project. In addition, in cases where there is a substantial negative effect on the nature foundation for the exercise of Sami culture, an agreement on further economic benefits may be entered into. This gives the Sami parties a more powerful negotiating position during the consultations.

### **The Consultation issue in the 2021 Fosen Wind Farm Case**

In 2021, the Norwegian Supreme Court sitting in the Grand Chamber (15 judges) unanimously found that the licenses issued by the government for wind farms on the Fosen peninsula were invalid because they violated the protection of Sami rights under Article 27 of the ICCPR (Supreme Court of Norway, 2021).

In the judgment, the Court also discussed consultation issues. The main content, however, is an extensive analysis of Sami substantive rights under Article 27. The Supreme Court found that the wind farms interfered with the reindeer herders’ right under Article 27 to enjoy their own culture, which includes reindeer husbandry.

Licenses for extensive wind power development on the Fosen peninsula in the mid-Norway county of Trøndelag were awarded in 2010. The wind farms, which were completed in 2019

and 2020, are located within the area of the Fosen reindeer grazing district, where two siidas practice reindeer husbandry. The validity of the licenses and the accompanying expropriation decisions were challenged in the Norwegian courts, ending with the unanimous Grand Chamber decision. This case was a celebrated victory for Sami interests. At the time of writing (March 2024), two agreements have finally been entered into, one with respect to each siida. The parties have agreed on financial compensation and the government has promised to give the siidas access to winter grazing areas outside the existing Fosen reindeer-grazing district. The wind farms will continue to operate producing electric power (Norwegian Government, 2024). There is now an understanding, also by the president of the Sami Parliament, that there no longer is an ongoing violation of Article 27 (Sami Parliament, 2024).

With reference to case law related to Article 27 from the UN Human Rights Committee, the Supreme Court assumed that there would be a violation of the rights under Article 27 if the interference on the reindeer herding has significant negative consequences for the possibility of exercise of culture. The threshold of the norm expressed by the Court is “significant negative consequences”. An important aspect of the assessment is that the relevant measure, the wind farms, had to be seen in context with other measures in the area, both previous and planned, and that the cumulative effects of the activities form the basis for determining whether a violation has taken place.

In terms of meaningful stakeholder engagement, it is especially interesting that consultations had been carried out but that this did not prevent a violation of Article 27 if the consequences of the interference were serious enough.

In the individual assessment, the Supreme Court took as its starting point the Court of Appeal’s conclusion that, in practice, the winter pastures near the two wind farms were lost, and that the project development without remedy measures would therefore threaten the existence of reindeer husbandry on Fosen. The wind power development would therefore have a substantive negative impact on the reindeer herders’ possibility to exercise their culture.

With respect to consultation, the Court stated: “Although the consequences of the measure largely dictate whether the rights in Article 27 have been violated, it is also essential whether the minority has been consulted in the process” (Paragraph 120).

With respect to consultation, the Court referred to “several decisions from the UN Human Rights Committee. Both in *Ilmari Länsman and Others v. Finland* (CCPR-1992-511) paragraph 9.6 and *Jouni Länsman and Others v. Finland I* (CCPR-1995-671) paragraph 10.5, this aspect is considered in the individual assessment. The Committee took a more general approach in *Ángela Poma v. Peru* (CCPR-2006-1457) paragraph 7.6. Here, it is observed that the question of violation “depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures ...” (Paragraph 120).

Further, the Court referred to the importance of consultation that was stressed in the *Reinøya* and *Reindeer cull I* decisions from 2017 that were analyzed above.

With respect to the extent and effect of consultations, the Supreme Court continued by stating that it “appears from the Human Rights Committee’s decisions and the mentioned Supreme Court judgments that whether and to which extent the minority has been consulted cannot be decisive”.

The role of consultations “is rather an aspect to be included in the assessment of whether the right to cultural enjoyment has been violated”. Having undertaken consultations does not

prevent violation of Article 27 if “the consequences of the interference are sufficiently serious”. And the Court, on the other hand, stated that it is “not an absolute requirement under the Convention that the minority’s participation has contributed to the decision, although that, too, may be essential in the overall assessment” (Paragraph 121).

This reasoning must follow from the fact that the wording of Article 27 does not address consultations at all. This is a requirement that has been developed in practice.

Even if it falls somewhat outside the main topic of this chapter, there is reason to quote the Supreme Court’s position on the substance in the Court’s final assessment of the case:

[The] starting point must be that Article 27 aims at protecting the right to cultural enjoyment. As mentioned, reindeer husbandry is a form of protected cultural practice while at the same time a way of making a living. The economy of the trade is therefore relevant in a discussion of a possible violation. The relevance must be assessed specifically in each individual case and must depend, among other things, on how the economy affects the cultural practice. In my view, the rights in Article 27 are in any case violated if a reduction of the pasture deprives the herders of the possibility to carry on a practice that may naturally be characterized as a trade.

(Paragraph 134)

Accordingly, the Court found that there was an absolute limit.

In regard to the impact of the consultations, a complicated legal issue in the case concerned whether Article 27 allows for a balancing of the interests in the case between the green shift (or transition) and Indigenous Peoples’ rights. The dilemma between climate-related green-house-gas reductions and Sami rights to territory is often present in the discussions of the case. On the topic of balancing of rights versus absolute minority rights, the Court started out by noting:

[agreement with] Fosen Vind [the defendants] that “the green shift” and increased production of renewable energy are crucial considerations. But as mentioned, Article 27 ICCPR does not allow for a balancing of interests. As also mentioned, this may be different in the event of conflict between different basic rights. The right to a good and healthy environment may be relevant in such a context.

(Paragraph 143)

Having said that, the Court addressed more in detail what had happened during the development of the project and found that the case was not a case of collision between two basic [human] rights. Several development alternatives had been at hand. In the process, however:

Despite the constant highlighting of the negative consequences for reindeer husbandry, the choice fell on Roan and Storheia, among others. Fosen Vind [the defendants] has not disputed that the progress of the planning of each windfarm was a key factor in the selection. As the case has been presented to the Supreme Court, I must assume that “the green shift” could also have been taken into account by choosing other – and for the reindeer herders less intrusive – development alternatives. Then, the consideration of the environment cannot be significant when assessing whether Article 27 has been violated in this case.

(Paragraph 143)

This reasoning by the Court demonstrates that the engagement by the reindeer herders during the process, giving indications that better-chosen sites could have been found, also meant that the function of the engagement was part of the basis for the conclusion reached by the Supreme Court.

Also the two mediation processes that were undertaken to settle the aftermath of the ruling may be seen as a strong form of consultation. Since the reindeer siidas won the case in the Supreme Court, they must have had a fairly good negotiation position.

### **Discussion of Meaningful Stakeholder Engagement in Consultations**

What can we say about the consultation process that is set out in the Sami Act? In Chapter 1, Buhmann et al. (2024) point to the importance of the engagement process being meaningful from the perspective of those who are or may be affected by a project or activity. The engagement should be aimed at understanding impacts from the perspectives of those at risk or actually affected. The Sami Act Section 4-6 subsection 1 reads:

Consultations shall be conducted in good faith and with the purpose to reach agreement. The organ that has the consultation duty, shall give full information about all relevant issues on all points of time in the handling of the case.

The requirement of full information and the purpose of reaching an agreement both point towards a real process where the opinion of those affected will be a material part of the consultation. The full information requirement means that the process should be a process which takes its departure in, accounts for, and responds to the needs for data, explanations and discussions based on the concerns, needs and livelihoods of actually or potentially affected people, from their own perspective, as explained in Buhmann et al. (2024)

Further, Buhmann et al. (2024) also note that engagement is expected to go beyond the formal limits of consultations as processes required by law with regard to environmental, social, strategic, and other types of impact assessment. However, the rules on consultation in the Sami Act have a different character than consultations related to impact assessments. They are different from the requirement that may lead to a ‘tick box’ approach, which typically may be a part of impact assessments. Instead, we can see consultations that come closer to and may even turn into negotiations. On the other hand, impact assessment processes may also sometimes be more than ‘ticking boxes’. With respect to directly affected Sami groups or individuals, the Sami Act rules on consultation also apply in situations of impact assessments. Further, when it comes to the Sami Parliament’s involvement in cases under the Building and Planning Act, including impact assessments, the rules of that act must be supplemented by the consultation rules of the Sami Act.

There are several reasons for the different character of the consultations under the Sami Act, including in particular the applications of the consultation regime within a system of possible economic benefits in the proposed Mining Act. One reason is the mobilization of the Sami people since the late 1970s and the overall acceptance of fair Sami claims in Norwegian society. Part of this is the establishment of the Sami Parliament, which has developed into an important institution with a significant impact. Another reason is that Norwegian authorities decided to ratify ILO Convention 169. This has been an instrument exerting pressure on Norwegian legislation, which is very apparent in the phrasing of the Sami Act consultation rules. They are not part of the traditional impact assessment rules, but stem from another



background. Finally, the seriousness of the Norwegian courts, and especially the Supreme Court, in handling Sami matters, especially based on the ICCPR Article 27 has also increased the overall acceptance of and respect for Sami rights.

Altogether, this ought to imply that consultations with Sami interests based on the new rules make possible a sensible way forward in respecting Sami rights and balancing the minority and the majority interests.

One important feature of the consultation of Sami interests is the multi-level organization on the rights-holders' side. The Sami Parliament, with its permanent and well-staffed organization, is basically involved in consultations on all important Sami issues. At the same time, the local, directly affected people must also be consulted. That creates a structure with two, or sometimes more, levels on the side of those that are consulted. At the same time, often state as well as local governmental bodies are involved. This creates arenas where the Sami interests can influence the outcomes in different ways. There is, however, also a risk that there will be too much administrative consultation which may overburden especially the local Sami people. The legislature has realized this and now requires coordination when several processes take place in parallel.

Larger projects, be it mining or wind farms, that typically strongly affect Sami communities are almost always developed by private parties based on government licenses. The government must protect human rights and the private parties must respect them. Both of these obligations imply a requirement for meaningful stakeholder engagement. Especially within the OECD, much thinking and practical experience have been put into how this should be undertaken. On the other hand, many countries, Norway not least, have enacted binding rules on consultation. In my opinion, it is important that the governments learn from the discussions and documents on meaningful stakeholder engagement from the private sector and let that inform the consultations rules, especially with respect to content of the consultations. Above all, see OECD (2017a) as a practical tool. Further, see Mestad (2018) for an analysis of how to involve affected persons under the OECD Guidelines.

In the introduction, I mentioned that there are three core questions when analyzing and regulating consultations. First, when should engagement or consultation be undertaken? Secondly, what should the content of the engagement or consultation be? Thirdly, what should the outcome of the process be? We have seen that there is detailed regulation with regard to when consultations should take place. With respect to the outcome, it is not easy to provide rules, since every case has its individual character; but the outcome may vary from invalidity of a decision to a fair process having been undertaken, but with no real impact on the outcome. Often, the outcome will be somewhere in-between. With regard to the content of the consultations, which in my opinion is often the most important element, the general rules should be developed further, at least in manuals or delegated regulations. This is often the most important part of achieving real meaningful consultations. One example is the Consultation Agreement between the Sami Parliament and Norwegian Water Resources and Energy Directorate of 2009, which states that both parties "shall actively search for compromises and changes to approach the other party" (my translation) (Eriksen, 2023, p. 21).

Cultural understanding and respect very often constitute a core requirement in such situations, especially when those consulted are not professionals in the field, like the staff of the Sami Parliament. In such cases, I think there is a lot to learn from the story my father told me and that I retold in the introduction: How to establish a decent exchange of information and opinions with those directly affected is probably the most important prerequisite for

achieving results that protect Sami interests and at the same time make possible developments in which the greater society or even everyone involved wish for.

### Notes

- 1 The OECD Guidance (OECD, 2017a) has also been published in a North-Sami translation, see OECD (2017b).
- 2 See the Norwegian Government (2005) for the full translated text of the agreement.
- 3 See Ravna (2020) for the background to the Consultation Agreement of 2005 and parts of the further development.
- 4 Compare Fitzpatrick and Fast (2024) on administrative hearing in Canada.

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# THE EXPERIENCE OF A SÁMI REINDEER COMMUNITY AFFECTED BY A LARGE WIND POWER PROJECT

*Marianne Gråik, in conversation with and Karin Buhmann*

## **Introduction**

This note shares the experience of the Jijnjevaerie reindeer herding village, a small community affected by a large wind energy project. I was chairperson of the community at the time when the project was launched, and later became mayor.

The village of Jijnjevaerie is populated by sàmi, an Indigenous people living across the northern parts of Norway, Sweden, Finland, and Russia. Jijnjevaerie is located in western Sweden, close to the Norwegian border. The community engages in reindeer herding as a collective company, although each reindeer herder has their own animals. The livelihoods of around 50 community members are related to reindeer herding, a traditional way of living for sàmi people. The reindeer herding is framed within and by the sàmi village, which holds the rights for reindeer herding. In 2007, the power company Statkraft announced plans to construct six large wind farms on land used by the community for reindeer grazing. The projects have affected the village and the reindeer-herding community in many ways since we first learned about the plans, and still do. The wind farm has been operational for several years. There have been several situations involving forms of engagement, and there are long-term impacts. As this is one of the first instances of a large wind power project affecting sàmi lands and practices, our experience highlights some of the important problems and challenges associated with organizing and conducting a process of meaningful engagement with affected stakeholders, especially doing so in a manner that identifies, handles, and follows up on risks, concerns, and actual harmful impacts, and taking the longer-term impacts into account as well as the immediate ones.

In 2007, we received some information about the project and were contacted by Statkraft. This was before the company submitted its application to the Swedish authorities at the end of 2008. Members of our community were very worried about the impacts on the reindeer herding and felt that we had not been adequately involved. In 2012, we submitted a complaint to the OECD National Contact Points (NCPs) of Norway and Sweden. To be honest, we did not feel that the OECD NCPs offered us, as complainants and reindeer herders in a small village far from the big cities of Oslo or Stockholm, very appropriate opportunities for being

involved and sharing our concerns. The wind farm is still there, it is operational, and, as a result of it, we are seeing adverse social impacts affecting the cohesion of families in the village, of marriages, and of the future of the reindeer herding profession as younger people have lost interest in learning the profession.

In the following, I elaborate on these aspects, our experience, and my reflections on what this means for understanding and applying meaningful engagement with affected stakeholders.

### **Start of the Wind Power Project**

Around 2007, when the wind farm project was first discussed, I became the village secretary charged with following the project.

Statkraft approached Jijnjevaerie around 2007, explaining about their initial plans. According to their initial information, the project would involve about 600–800 wind turbines. Later, we learned more details about the project, and it became clear to us that the project would cover a much larger area than what we had first been told. At the time, it became clear to us that there would be major impacts for the reindeer and therefore for us, as reindeer herders. At least half of the reindeer and reindeer owners would be affected. In November 2007, we pointed this out to the company. But we were not informed or involved in any follow-up.

At the time, we knew very little about wind power. We had explored a bit of knowledge about wind power and impacts, mainly based on wind farms in the neighboring country of Denmark, but the available information that we came across related mainly to offshore wind farms. But we found other information on land-based wind farms and came to understand more and more about the associated impacts and risks. Gradually, we also started to receive information from the municipality and local county authorities handling Statkraft's application for a permit to go ahead with the wind power project.

Based on the information we received, as well as our traditional knowledge about reindeer, we were unable to agree with the project. We made this clear in 2007 and explained why, but our concerns were not heeded in the onward process. We were particularly concerned that the planned wind turbines would cause a loss of traditional pastures and disturb the herding of reindeer between summer and winter pastures. We were also concerned that the wind turbines might cause even minor changes to the migration patterns of our reindeer. We have a strict legal responsibility to control our herds during the winter and also keep the reindeer on our lands, and we worried that changes to their migratory patterns might cause conflicts with other sàmi reindeer herders. We were also afraid that the wind power project might cause a reduction of the number of our reindeer, as a result of grazing lands being lost due to the siting of the wind turbines. All of this would affect our culture as sàmi reindeer herders.

Statkraft undertook a social and environmental impact assessment in 2008. Throughout the impact assessment process, the local county administration was the responsible authority. The administration instructed Statkraft to undertake a detailed assessment of the impact on reindeer herding. The assessment was undertaken by a consulting company and confirmed our concerns. Still, Statkraft did not want to take the concerns seriously and suggested mitigating measures that we felt were not adequate. Around the same time, a number of other wind power projects were emerging in at least six areas and involving six different wind farms. In 2010, we were aware of 20 emergent wind power projects; however, Statkraft's project at Jijnjevaerie was the largest, and also one of the most complex in terms of impacts. We felt that Statkraft did not listen to our concerns and did not involve us in the decisions they made

concerning the onward development of the project. We did meet several project managers, who were mostly kind and said that they would take our concerns seriously. We made many suggestions for changes, such as eliminating from the proposed siting of the wind farm some areas that were particularly important for the reindeer. But as we saw it, the management of Statkraft did not consider our concerns.

In 2013, each reindeer herder was offered compensation of SEK 5000 per built wind turbine. However, this was not enough. The situation was not about money, but about reindeer and our traditional way of living as a value that cannot just be compensated by money.

We reached out to the Sámi Council (*Samerådet*, a non-governmental organization with sàmi member organizations in Finland, Russia, Norway, and Sweden), the government of Norway, and the Norwegian Sami Parliament (*Sametinget*), but none of these bodies responded much to our case, and we did not receive any assistance. In Norway, sàmi mainly have reindeer in the open mountain regions. This makes activities, such as protests, quite visible. In Sweden, we keep our reindeer in forested areas. This makes it more difficult to stage clearly visible protests that catch the eyes and attention of media, politicians, etc.

After the wind turbines were erected, we tried to carry on our reindeer-herding activities. But we have found that it is not possible to keep reindeer in the area where the wind turbines are located, or in the large areas that are affected by the noise and the movement and light effects of the blades. In fact, a larger area is affected by this than we had expected. The combination of noise and the moving blades drives the reindeer away from the areas where we thought they could still graze despite the wind turbines. Reindeer are prey to some carnivores, so their instinct is to be very aware of any background noise or unusual sounds.

### **Complaint to OECD NCPs**

In October 2012, we submitted a complaint to the OECD NCPs of Norway and Sweden. We were hoping that the NCPs would facilitate a meaningful dialogue with Statkraft, so that we might reach a solution that was acceptable to us. In our complaint we explained that the consultations undertaken by Statkraft had not been adequate as a meaningful form of engagement, and that the project was contrary to the wishes of our village and the reindeer herders. We also explained that the wind farm would severely affect the future of our reindeer herding and therefore the economic and cultural survival of our community.

However, the NCP process was also not very meaningful for us in the sense of meaningful stakeholder engagement, because we did not experience it as involving us much as the affected party. We thought the OECD NCPs would ensure a meaningful dialogue between the parties, and ensure that power balances would be adequately addressed. Compared to Statkraft, the sàmi village was the weaker party, with fewer economic and other resources. But there was no dialogue with Statkraft. Instead of facilitating the dialogue that we were hoping for, the NCPs talked to each of the parties and then looked to mediation to consider what had happened already. But that was not the dialogue we were hoping for, in order for Statkraft to take our concerns seriously.

The process was undertaken jointly by the NCPs of Norway and Sweden, but the NCP of Norway in Oslo played the main role. One of the reasons why we did not experience the NCP process as very meaningful in regard to the needs and situation of the affected people was that it was so tied to the locality of the NCPs, in the capital cities of Oslo and Stockholm. We were quite surprised to find that the NCP process was so physically bound to Oslo. The NCP staff

did not seem interested in coming to the sàmi village. Neither the Norwegian nor the Swedish NCP took the opportunity to meet with us on our home ground or to see what things were like on site. The process was very much based on theoretical assessments and not on our real-life experience.

We had to travel from Jijnjevaerie to Oslo; Statkraft could just go from their main office in Oslo. We attended four meetings in Oslo, but we only met with middle-level managers from Statkraft, not the top management, who made the decisions.

We explained to the NCP that the reindeer-herding community had made multiple suggestions to Statkraft, but that these were not reflected in the decisions made by Statkraft. Overall, the NCP process did not improve the dialogue with Statkraft. Instead of supporting a dialogue between us and Statkraft, they launched a mediation process. At first, we thought that that might be a way towards dialogue, but we were very disappointed with the form and meaningfulness of the mediation process.

For mediation purposes, a mediator is appointed and talks to the parties. Once again we felt that there was no interest in seeing the reality on the ground from our perspective. The mediator organized two meetings and a phone-based dialogue process. This was not the sort of meaningful dialogue that we wanted with Statkraft.

Moreover, a mediator has to be objective. In our view, this also means that the mediator should take a positive view of the affected party who makes the complaint. In this regard we felt that it was a problem that the mediator belonged to the majority population, because this can make it difficult for the mediator to understand the situation of a minority population, in our case Indigenous People making up a small group within the Swedish or Norwegian societies. We felt that the NCP prioritized a mediator with experience in management and economics, which might facilitate an understanding of the concerns of Statkraft, over someone who could appreciate the situation of an Indigenous sàmi community. Right after the mediation process, the person who served as mediator in our case was appointed to a government committee on sàmi rights, which is not by any means aligned with the views and interests of the sàmi themselves. This made us uncertain if he was actually objective, because of his own views on the situation of the sàmi people. We felt that the mediation part of the NCP process was not meaningful because of the absence of a mediator whom we could perceive as objective and willing to listen to the arguments without any pre-formed views. Several potential candidates were suggested to us, but we did not know any of them and did not perceive any of them as having a strong background for appreciating the situation of Indigenous People. Eventually, the Secretariat of the Swedish NCP identified a mediator in Sweden.

### **Meaningful Engagement to Take Account of the Extensive Time Sequence When Impacts Occur**

The first phase upon learning about a planned project is one of shock. The affected community or group sticks together and works together to try to handle the problems. But soon changes occur that have a bearing on the collaboration and sense of unity. We experienced that in our village. Some people were suddenly competing for new land to replace the land that could no longer be used due to the wind turbines. Conflicts arose between neighbors, and even within families. Since the project started, we have observed a rise in divorce rates and alcohol abuse in the community; and the young people are less interested in learning how to take care of the reindeer. 11 young people below the age of 18 were ready to start learning the profession when the wind energy project took off. Of those, only four are active reindeer

herders today. With my generation gradually leaving the profession, this will have a major impact on the village, its economy, and its social cohesion. For engagement with affected stakeholders, for example in connection with impact assessments and consultations as well as conflict resolution through mediation, etc., it is of paramount importance that such longer-term impacts are appreciated and understood.

Ideally, such longer-term impacts should also be considered in social impact assessments (SIA). In Sweden, a SIA is very much based on hard facts, like the number of reindeer, how many jobs, and overall economic data. We also felt that the NCP secretariats were not aware of the longer-term impacts or willing to devote time to understanding the impacts or risks.

### **Recommendations for Meaningful Engagement with Stakeholders Affected by Projects, e.g. Wind Farms**

First of all, power issues must be recognized. It is important that power disparities between parties are addressed. Power imbalances are contingent on various factors, including several types of resources: not just economic resources but also experience with relevant types of engagement and dialogue processes, as well as knowledge of impacts. For example, in the NCP process, our travel expenses were covered, but compensation for loss of salaries or normal income for the community members who participated was not covered. Moreover, for the NCP process to be balanced, affected people or others who make the complaint should be offered the assistance of someone with an academic background to match that of the other party (in our case Statkraft).

Second, it should be a priority for knowledge of human rights and the rights of Indigenous People to be an integrated aspect of processes relating to impacts on people. For example, those who carry out impact assessments or are involved in mediation or conflict resolution should have such knowledge.

Third, companies or other proponents of projects should be asked to directly demonstrate that they do not infringe rights or otherwise cause impacts that are, or may be, harmful to the affected people. That is also related to the issue of power. For example, in our case, Statkraft only had to state that they were not infringing our rights or that they had already adjusted the project to mitigate risks or harmful impacts, whereas we were asked to prove that the project did not adequately take account of the risks and actual impacts.

Fourth, when mediation takes place, such as under the 'good offices' of NCPs, if the mediator is from the majority population, the mediator should at least be familiar with the Indigenous lands in question. In our case, a mediator from another part of the country than the sàmi areas would have been a better choice. As it were, the NCP prioritized a mediator with knowledge of law and of business. That, too, relates to the issue of power.

Finally, for the entire process of planning, impact assessment, consultation, dialogue, and conflict resolution such as through mediation and NCPs, and follow-up when the project is operational: the point of departure should be more knowledge and awareness of the situation of the affected people. This should be in place before first contact is made with an affected Indigenous or other community on a proposed project or project idea. It should include knowledge of the economy, society and culture, rights, and particular legal issues, and respect for the limited resources of the affected community. An interest in, and willingness to understand, how modern society affects Indigenous Peoples should be part of this. This also applies in cases where, for many practical purposes, like for the sàmi, the affected Indigenous People



live their life and have jobs and education like the majority population, but still also pursue their traditional way of life.

A few years ago, I participated in a United Nations Permanent Forum for Indigenous Peoples. Several other participants from other communities around the world have similar experiences to ours. This also underscores the importance of power relations and willingness to meaningfully engage with affected local Indigenous or other communities in any type of planning and decision-making processes affecting them.

# 14

## UNDERSTANDING UNILATERAL, BILATERAL, AND MULTILATERAL APPROACHES TO MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE DESIGN AND IMPLEMENTATION OF OPERATIONAL GRIEVANCE MECHANISMS

*Malcolm Rogge*

### **Introduction**

This chapter assesses the current status and future prospects of meaningful stakeholder engagement (MSE) in the design and implementation of “operational grievance mechanisms” (OGMs). The discussion is framed by the standards prescribed in the UNGPs (UN, 2011) and OECD (2023) Guidelines. In examining industry, reports, academic literature, policy papers, legal cases, and other probative materials, the chapter identifies three approximate modes of stakeholder engagement that are used in developing OGMs: unilateral, bilateral, and multilateral. The application of this typology (see Table 14.1) is helpful for understanding how differentiated modes of stakeholder engagement are intrinsically linked to the varieties of institutional design of OGMs, as well as to their ongoing effectiveness, or lack thereof.

As discussed in the introduction to this book, MSE is a concept and practice that has potential to improve social and environmental outcomes for affected stakeholders (Buhmann et al., 2024). The positive potential of MSE in the design and implementation of OGMs is frequently asserted in many of the research materials that were examined for this chapter. While there are few empirical studies on the prevalence of OGMs and their effectiveness, some conclusions can be drawn from the materials reviewed. On the whole, there is a consensus among experts that the importance given by firms to the development of OGMs has

increased since the adoption of the UNGPs in 2011 (International Council on Mining and Metals, 2019; Mining Association of Canada, 2015). However, opinions about the success of OGMs in providing adequate remedy for rights-holders are decidedly mixed, with some experts identifying significant gaps (EarthRights, 2022; Harrison & Wielga, 2023; International Commission of Jurists, 2019; Kaufman & McDonnell, 2016; Knuckey & Jenkin, 2015; Office of the High Commissioner for Human Rights, 2019a, 2019b; Oxfam, 2021; Rogge, 2013; Storey, 2020; van Huijstee & Wilde-Ramsing, 2020). Focusing on OGMs in the extractive industry, Owen and Kemp speak of “a deep dysfunctionality in the remedy systems currently available at the operational level to address local struggles at the source of mineral extraction” (Owen & Kemp, 2023, p. 2). Anecdotally, the International Commission of Jurists (ICJ) has found that some OGMs “have been viewed as adding to the problems of affected people,” and that a “common complaint has been the limited attention given to the views and interests of people and communities who are intended to benefit from the OGMs” (ICJ, p. 9; see also Columbia Law School, 2015; Coumans, 2018a, 2018b; EarthRights, 2022). Nonetheless, efforts to build on lessons learned to improve such mechanisms are supported by businesses, multi-stakeholder initiatives, NGOs, UN agencies, and even those who have raised serious concerns about their effectiveness in providing adequate remedy (see e.g.: EarthRights, 2022, p. 1; RAID, 2018).

This chapter begins by providing an overview of the conceptual foundations of OGMs and the state of contemporary practice. It focuses on the widespread influence of the UNGPs on the development and implementation of OGMs. The chapter then provides a clear-eyed assessment of what has been achieved so far in practice in using MSE in the progressive development of rights-compatible OGMs, and lie ahead.

### **Background to Operational Grievance Mechanisms (OGMs)**

In the UNGPs, a grievance is defined as “a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness for aggrieved communities” (UNGP, 2011, commentary to Principle 25). OGMs are established for individuals or groups to bring formal complaints against companies and other organizations. The seriousness of complaints raised may range from minor disputes about pay and benefits, to environmental concerns, to land conflicts, to allegations of serious human rights abuses. OGMs fall under the broad category of non-judicial grievance mechanisms (UNGP, 2011). They are said to be “operational” because they generally form part of an organization’s day-to-day activities, though the frequency of their use by affected stakeholders varies greatly from place to place.

Traditionally, formal grievance mechanisms have focused largely on grievances brought by employees against their employer (CSR-Europe, 2013, pp. 33–34). In unionized workplaces, a grievance mechanism’s rules, such as timelines for the resolution of a grievance, are typically developed jointly through *bilateral* negotiations between worker and employer representatives in the course of collective bargaining (see Table 14.1). During these formal negotiation processes, worker and employer concerns may be addressed, including concerns about accessibility, procedural fairness, substantive remedies, and the use of third-party independent mediators or arbitrators. Such rules are binding on both parties. The mechanisms can be improved over time as agreements are renegotiated and renewed. These negotiated grievance mechanisms operate in the shadow of the law in the jurisdictions in which they are developed – the mechanisms are expected to operate in compliance with labor relations laws that

Table 14.1 A typology of unilateral, bilateral, and multilateral modes of stakeholder engagement for developing OGMs

	<i>Unilateral</i>	<i>Bilateral</i>	<i>Multilateral</i>
<b>Parties</b>	Company owns and controls the OGM; company manages the engagement processes that is used for designing the OGM; company chooses unilaterally which stakeholders to engage with; company unilaterally determines who are the “legitimate” stakeholders. <sup>a</sup> Company may engage extensively with stakeholders; however, company retains decision making authority.	Two parties, each with the capacity to enter into binding, enforceable agreements, engage in party-to-party negotiations over the design and implementation of the OGM. Note: In “trilateral” modes, a third entity, such as a government agency, is directly party to negotiations and may be a party to final agreements.	Three or more parties engage in dialogue and negotiations over the design and implementation of the OGM. Parties may include companies, Indigenous representative organizations, industry associations, NGOs, government agencies, intergovernmental organizations, financial institutions, etc. However, such mechanisms do not guarantee that all stakeholder groups will be invited to participate in the process.
<b>Funding/Budget</b>	OGM is funded by the company and the budget is controlled by the company unilaterally. Company may choose to engage with stakeholders regarding select aspects of the budget, including support for community relations activities.	Both parties have access to financial and technical resources to support negotiations over the design of the OGM; however, the company is likely to have far greater resources. Some aspects of the OGM may be funded by both parties, such as the fees and expenses paid to an arbitrator. <sup>b</sup>	The development of grievance mechanisms may be funded by multiple parties; and generally, no single party unilaterally controls the funding and budget. Some multi-stakeholder initiatives publish annual reports that include financial data. <sup>c</sup>
<b>Nature of Agreement</b>	Company makes public commitments to stakeholders; company may enter into a non-binding memorandum of understanding with select stakeholder groups. <sup>d</sup> In some cases, the company and select stakeholders may enter into agreements that have some bilateral features, including some binding features.	Parties enter into legally binding party-to-party agreements that include rules and procedures for dispute resolution, such as grievance mechanisms under collective agreements <sup>e</sup> or dispute resolution provisions in impact benefit agreements. <sup>f</sup>	Mutual agreement by consensus/voting among multiple parties on grievance mechanism design and operation. Multi-stakeholder initiatives may require their member organizations, including companies, to implement an OGM according to agreed standards. <sup>g</sup>

(Continued)

Table 14.1 (Continued)

	<i>Unilateral</i>	<i>Bilateral</i>	<i>Multilateral</i>
<b>Power to alter agreements</b>	Company has power to unilaterally alter the ongoing function of the OGM; however, the company may choose to engage with affected stakeholders prior to making any changes.	Mandatory provisions on the design and ongoing operation of the OGM are specified in binding agreements. Consent of the parties is needed to alter these provisions.	Rules and policies on the design and ongoing operation of the OGM are based on mutual agreement; no single party to the agreement can unilaterally alter such rules and policies.
<b>Modes of Communication</b>	Company transmits information about the OGM; company receives feedback from stakeholders through consultation/engagement activities that are managed by the company. Roundtables for dialogue with stakeholders may be organized in collaboration, or in partnership, with affected stakeholder groups. <sup>h</sup> Partnerships may have some bilateral features.	Party-to-party dialogue and negotiations; company engages in two-way dialogue and/or negotiation with an organized representative stakeholder group, such as a legally constituted trade union or First Nations political organization.	Multiple parties, each with voting power (or power to enter into consensus arrangements) are directly involved in dialogue and/or negotiations over OGM design and implementation. Authority for day-to-day implementation of the OGM may be delegated to a secretariat or site-level operation.
<b>Administration</b>	Company controls the day-to-day administration of the OGM; stakeholders may be delegated a role in certain operational matters.	Both parties have some, though not necessarily equal, roles in the ongoing administration of the OGM.	Authority for day-to-day implementation of the OGM may be delegated to a mutually agreed secretariat or site-level operation. <sup>i</sup>
<b>Assessment/Adjudication</b>	Company has unilateral control over the investigation and adjudication process; <sup>j</sup> however, company may engage with affected stakeholders to varying degrees on how grievances are adjudicated, and by whom.	Procedures for investigations and selecting adjudicators are based on mutual agreement; means of selecting arbitrators is determined by consent of both parties.	Mutual agreement among parties to the multi-stakeholder initiative on procedures for adjudication and on selection of mediators/adjudicators/arbitrators.

<b>Continuity/ Succession</b>	In a sale or merger, unless otherwise agreed, control over the OGM changes hands, and the new controlling company may decide unilaterally to alter it. The new company may choose to consult with affected stakeholders prior to making changes or may choose to uphold non-binding commitments made by the previous company.	Binding agreements on grievance mechanisms, remain in place under overarching succession rules. Binding rules in case of change of control may be included in party-to-party contracts or agreements. Acquiring company may agree to continue to honor bilateral framework agreements with First Nations. <sup>k</sup>	Parties agree on rules for entering and leaving multi-stakeholder initiatives. The multi-stakeholder initiative and its grievance mechanism survives when a company is sold, although the acquiring company may decide to withdraw from the multi-stakeholder initiative. In some cases, company may withdraw from multi-stakeholder initiative at any time (Storey, 2020).
<b>Examples</b>	Barrick Gold’s remedy framework for sexual violence at the Porgera mine in Papua New Guinea (Barrick Gold, 2012); Unilever Palm Oil Grievance Procedure (see: Storey, 2020); Kakuzi Plc operational grievance mechanism (Kakuzi, 2022).	Grievance and arbitration provisions that are specified in collective agreements; agreements on dispute resolution that are included in impact benefit agreements. <sup>m</sup>	Fair Labour Association Third-Party Complaint Mechanism; International Accord for Health and Safety in the Textile and Garment Industry complaint mechanism; Better Cotton Initiative’s grievance management process. <sup>n</sup>

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- a For example, when designing the remedy framework for victims of sexual violence at the Porgera mine in Papua New Guinea, the mining company unilaterally chose to exclude certain local organizations from consultations (Columbia Law School, 2015; Enodo Rights, 2016; Knuckey & Jenkin, 2015, p. 6).
- b See e.g., Canadian Union of Postal Workers – Canada Post Collective Agreement, 2022, s. 9.104.
- c For example, the complaints mechanism developed by the International Accord for Health and Safety in the Textile and Garment Industry is funded through “signatory fees.” In 2020, the total signatory fees exceeded \$5 Million (International Accord, 2023, p. 28)
- d See e.g., Chevron’s global memorandum of understanding for communities in the Niger Delta (Hoben et al., 2012)
- e For example, the collective agreement between the Canadian Union of Postal Workers and the employer Canada Post includes detailed provisions on the “Grievance and Arbitration Procedure” (Canadian Union of Postal Workers – Canada Post Collective Agreement, 2022, s. 9). Provisions in the agreement include rules on grievance timelines, types of grievances (including policy grievances), right to arbitration, etc.
- f On the negotiation of impact benefit agreements, see: Gunton, 2020.
- g For a list of MSI’s that require their members to create a grievance mechanism, see: MSI Integrity, 2020, p. 162.
- h For a discussion of company efforts to engage meaningfully with stakeholders through meetings, roundtables and partnerships, see: Prno et al., 2021.
- i For example, the International Secretariat of the International Accord for Health and Safety in the Textile and Garment Industry is based in The Netherlands and is comprised of a 4-person management team and 6 international operations staff (International Accord, 2023, p. 12).
- j For example, in the Porgera mine remedy framework in Papua New Guinea, the company had ultimate control over the selection of the claims adjudicator/s. See Barrick Gold Corporation, 2021; Columbia Law School, 2015; Enodo Rights, 2016.
- k For example, in a recent acquisition of a mining project in Nunavut, Canada, the acquiring company B2Gold announced that it “will continue to honour the Framework Agreement... with the Kitikmeot Inuit Association” that was signed by the previous company (B2Gold, 2023).
- l For detailed analysis of this mechanism, see: Columbia Law School, 2015; Enodo Rights, 2016; Knuckey & Jenkin, 2015; Rogge, 2013; Thompson, 2017.
- m See: Kitikmeot Inuit Association, 2019, appendix v (“Article 19 Dispute Resolution”).
- n For a list of multi-stakeholder initiatives with grievance mechanisms, see: MSI Integrity, 2020, p. 162.

regulate arbitration processes, as well as general principles of administrative law. With the adoption of the UNGPs, the use of grievance mechanisms was extended to include claims brought by a much broader range of affected stakeholders, including for example, community members (such as local residents impacted by a mining project), indigenous people, and victims of human trafficking.

Predominantly, UNGP-inspired OGMs are developed in a *unilateral* context, rather than in a *bilateral* context, as is more characteristic of union–employer grievance mechanisms. They are *unilateral* insofar as they are funded, designed, and controlled by the company that operates them. By and large, companies that implement *unilateral* OGMs are able to alter them at will – they do not require the consent of other parties to make changes to the mechanisms; however, to maintain the social license to operate, it may be wise for them to consult with affected stakeholders in advance of making such changes.

The principal features of *unilateral* OGMs and the ways that they are distinct from *bilateral* OGMs are summarized in Table 14.1. As much as unilateral and bilateral OGMs differ in kind, these classifications are not fixed. There are times when some of the features of bilateral mechanisms, such as two-way dialogue and publicly stated mutual commitments, may be adapted for use in unilateral mechanisms. In some cases, the distinction between these two modes may be blurred; although, because of the unequal legal privileges, powers, and rights of business entities and affected stakeholders (often referred to as power imbalances), it is never erased entirely. Table 14.1 also includes examples of grievance mechanisms that have been developed *multilaterally* among a wide range of actors, including businesses, industry associations, community organizations, and NGOs. Such mechanisms may include third-party complaints procedures that are established by multi-stakeholder initiatives (MSIs). In OGMs that are developed multilaterally, affected stakeholders may be involved directly in their design and implementation; however, there is no guarantee that all affected stakeholder groups will be represented (Harrison & Wielga, 2023; MSI Integrity, 2020).

By and large, OGMs are structured and operated privately; however, they are shaped and governed by the overarching legal and social norms of the jurisdictions in which they are created. They sit within a larger “remedial ecosystem” (Scheltema, 2021) that includes stated judicial and other non-judicial grievance mechanisms, such as the OECD National Contact Point complaints mechanism (OECD, 2023). This remedial ecosystem also includes an eclectic mix of grievance mechanisms that are managed by financial institutions, global industry associations, and other transnational actors. For example, since 1999, the International Finance Corporation (IFC) has operated the Office of the Compliance Advisor/Ombudsman, a global non-judicial complaint mechanism for IFC-financed development projects (IFC, 2009, 2011).

OGMs are intended to “handle issues and grievances that arise at the frontline of business activities” (Owen and Kemp, 2023, p. 2). According to the UNGPs, they should be, “accessible directly to individuals and communities who may be adversely impacted” (UNGP, 2011, Principle 29, commentary). The form taken ranges widely, from employee hotlines to on-site grievance offices (Rees & Vermijs, 2008). They may be established to address concerns arising in many different contexts, such as a single factory, a mine site, a social media platform, or an entire industrial sector (e.g. garment manufacturing or cocoa production). For instance, after the Rana Plaza garment factory collapse in Bangladesh in 2013, some garment manufacturers and trade unions combined efforts to develop an Accord on Fire and Building Safety in Bangladesh which includes a remediation program (Anner & Bair, 2022). Owen and Kemp

point out that many of the direct dealings that arise through OGMs, “play out in remote locations that are far less accessible to outside researchers than the public discourse would suggest” (Owen & Kemp, 2023, p. 2).

Few detailed quantitative studies on stakeholder engagement in OGMs have been published. In recent years, the World Benchmarking Alliance (WBA) has helped to fill this gap to some extent through the production of the Corporate Human Rights Benchmark (CHRB) Report. The 2022 CHRB report demonstrates clearly that efforts to incorporate MSE into the design and implementation of OGMs need to accelerate. The report found that 91% of companies examined (n=127) “did not disclose that they engage with potential or actual users, such as workers and affected communities on the design, implementation, performance and improvement in their mechanisms.” More generally, the report found that 71% of companies surveyed scored zero on the CHRB’s scorecard for stakeholder engagement (WBA, 2022, p. 4). For the purposes of this chapter, the report’s most important finding is that 89% of companies surveyed scored zero on indicators for “user participation in design” of OGMs (WBA, 2022, p. 16). While the data strongly indicate that past efforts have fallen short, industry groups such as the International Council on Mining and Metals (ICMM) and Mining Association of Canada (MAC) are calling for more meaningful stakeholder engagement in the design and implementation of OGMs (see section below on *Countering skepticism and lack of trust through MSE*).

In the lead-up to the adoption of the UNGPs, John G. Ruggie, the former UN Special Representative on Business and Human Rights, proposed that non-judicial mechanisms, including OGMs, “may provide a more immediate, accessible, affordable, and adaptable point of initial recourse” for affected stakeholders (United Nations Special Representative, 2008, p. 22). Since then, much debate has ensued over whether or not OGMs have actually lived up to the promise of improved speed and accessibility, with some scholars identifying significant remedial gaps and practical challenges that need to be addressed (see e.g. Columbia Law School, 2015; Coumans, 2017, 2018a; Harrison & Wielga, 2023; Kaufman & McDonnell, 2016; Knuckey & Jenkin, 2015; Rogge, 2013). This chapter considers a range of views within that debate. Ultimately, the aim of the chapter is to support improved performance by businesses and other organizations in this challenging and (still) largely experimental domain.

### **The Scope of OGMs**

Principle 29 of the UNGPs states that OGMs should “specifically aim to identify any legitimate concerns of those who may be adversely impacted” (UNGPs, 2011, commentary to Principle 29). To achieve this aim, MSE in the design and ongoing implementation of an OGM will necessarily require communications with a potentially wide range of affected stakeholders. Such communications may involve actors with diverse interests pertaining to many-sided issues, including, for example: disputes over lands and resources; complaints based on indigenous rights, environmental concerns; local employment and economic opportunities; long-term visions of development; privacy violations; and violations of freedom of expression and association.

While the potential scope of grievances that may be brought to an OGM is very wide, there are limits to what remedies can be achieved through these privately administered mechanisms. OGMs are not intended to substitute for state-based judicial remedies, nor should they interfere with grievance mechanisms that have been established under a collective agreement (UNGP, 2011, Principle 29; OECD, 2023, para. 51). Moreover, they should never undermine



judicial processes, especially those which deal with criminal matters and serious human rights abuses. For instance, it has been argued that OGMs should be avoided in claims involving trafficking in persons and the severe exploitation of workers (see Special Rapporteur, 2019). Nonetheless, at times, a decision dilemma for both company officials and rights-holders may emerge where state-based systems are inaccessible, unreliable, biased, corrupt, delayed, expensive, or not trusted (see e.g., United Nations Report of the Special Rapporteur on trafficking in persons, para. 70, p. 17). Imperfect as they are, in some circumstances, affected stakeholders may reasonably feel that OGMs “may be the only viable option for seeking remedy” (EarthRights, 2022, p. 1). The institutional design and procedures of OGMs should reflect the fact that many human rights abuses, especially serious ones, are normally beyond the competence of company-led operational mechanisms (for an example of an OGM that makes this distinction clear, see e.g. Kakuzi, 2022).

The UNGPs assert that OGMs may provide a practical alternative to state-based dispute resolution insofar as they may be less costly for rights-holders and they may be able to provide a remedy in a more reasonable timeframe (UNGP, 2011, Principle 28). A case study conducted by the ICJ found that in a rural region where a mining company operated, judicial mechanisms were poorly resourced and short-staffed. In that region, it was rare for people to file complaints through the judicial system (ICJ, 2019, p. 36). In such cases, there may be advantages for rights-holders in using a non-judicial OGM as compared to judicial mechanisms. However, the expedient use of OGMs should never impede or undermine the long-term development of well-functioning and accessible state-led judicial remedy mechanisms.

### **MSE and OGMs in the UNGPs and OECD Guidelines**

Since 2011, the design of OGMs has been shaped in large measure by the UNGPs and OECD Guidelines on Multinational Enterprises (OECD Guidelines). The UNGPs guidance is found in Principles 29, 30, and 31 (UNGP, 2011). Section IV of the OECD Guidelines draws directly on the UNGP framework (OECD, 2023, para. 51). Relatedly, the IFC’s Performance standards require the establishment of OGMs by businesses that receive financing from the IFC (IFC, 2011).

For the purposes of this chapter, the key provision in the UNGPs that relates to MSE in the design and implementation of OGMs is Principle 31(h). As part of the UNGPs’ “effectiveness criteria” for OGMs, this provision specifically calls for OGMs to be based “on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.” The commentary to Principle 31(h) states that “engaging with affected stakeholder groups about [an OGM’s] design and performance can help to ensure that it meets their needs, that [rights holders] will use it in practice, and that there is a shared interest in ensuring its success” (UNGP, 2011, Principle 31(h)).

The powerful influence of the UNGPs on the development of OGMs was first demonstrated in 2012 in an ambitious experimental OGM created by Barrick Gold, one of the world’s largest gold mining companies, to address allegations of sexual violence committed by company security forces in and around the Porgera mine in Papua New Guinea (Barrick Gold, 2021). Prior to establishing the experimental OGM, Barrick conducted an internal investigation into the allegations of sexual violence which resulted in the termination of several employees who were implicated in the attacks, or who had failed to report them (McVeigh, 2015). In launching the OGM, which the company called the “remedy framework,” Barrick

Gold pledged to satisfy the “effectiveness criteria” laid out in Principle 31 of the UNGPs, including the UNGPs call to engage stakeholders in a meaningful way. Over a number of years, civil society organizations scrutinized the design and implementation of this remedy framework. Generally, they argued that it was not an appropriate mechanism for addressing credible allegations of serious human rights abuses (Knuckey & Jenkin, 2015; Rogge, 2013). Ultimately, eleven of the more than one hundred claimants chose not to use the company’s private remedy mechanism; instead, they retained independent legal counsel. After announcing their intention to bring a lawsuit against Barrick Gold in the United States, the claimants were successful in obtaining a settlement worth approximately ten times what the company initially paid to victims under the company’s remedy framework (Coumans, 2017, p. 282). More detailed discussion of this important case study can be found in an independent assessment of the remedy framework that was commissioned by Barrick Gold (Enodo Rights, 2016) and a detailed critical response to that report authored by the Human Rights clinics at Columbia Law School and Harvard Law School (Columbia Law School, 2015).

The General Policies of the OECD Guidelines are broadly applicable to MSE in the design and operation of OGMs. They call on enterprises to “[e]ngage meaningfully with relevant stakeholders or their legitimate representatives as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with respect to activities that may significantly impact them...” (OECD, 2023, para. 15). Specifically, MSE should be “two-way, conducted in good faith by the participants on both sides and responsive to stakeholders’ views” (OECD, 2023, para. 28). It should be noted that “two-way” and “responsive” dialogue are always considered to be aspects of meaningful stakeholder engagement; however, such practices are not in and of themselves substantively equivalent to *bilateral* party-to-party negotiations, such as collective bargaining (see Table 14.1).

As derived in large part from the UNGP’s effectiveness criteria for OGMs, the 2023 OECD Guidelines state that OGMs should satisfy the core criteria of “legitimacy, accessibility, predictability, equitability, compatibility with the [OECD] *Guidelines*, transparency, rights-compatibility, [and] being a source of continuous learning” (OECD, 2023, para. 51). Moreover, OGMs should be “based on dialogue and engagement with a view to seeking agreed solutions” (OECD, 2023, para. 51). It should be noted, however, that the goal of “seeking agreed solutions” around the development and implementation of company-led OGMs is not, in and of itself, substantively equivalent to seeking consent in legally binding *bilateral* party-to-party agreements (see Table 14.1).

For the sake of clarity, it should be noted that the OECD has its own global network of non-judicial grievance mechanisms, known as National Contact Points (NCPs). NCPs are state-led mechanisms that are administered by OECD member states. A complainant who is not satisfied with the outcome of a company controlled OGM, may in certain circumstances, take their grievance to a member State’s OECD NCP (OECD, 2023, pp. 58–76).

### **Unilateral, Bilateral, and Multilateral Modes of Engagement in the Development of OGMs**

The foregoing observations and analysis are systematized within a novel approximate typology of unilateral, bilateral, and multilateral modes of engagement in the development of OGMs, as provided in Table 14.1. *Unilateral* OGMs may involve varying degrees of stakeholder engagement or consultation; however, by and large, the operating company retains control over the form that such engagement takes. In this respect, most unilateral OGMs can

be described as “top-down” mechanisms, even if they engage quite liberally with affected stakeholders. In *bilateral*, and in some *multilateral* OGMs, the affected stakeholders and other parties, such as NGOs or industry associations, have real leverage over the final design of the OGM and its ongoing operations. As noted in Table 14.1, their leverage is backed up by actual bargaining power and possibly veto power over certain aspects of the mechanism, such as the selection of independent mediators or arbitrators. Truly bilateral modes of engagement in grievance mechanism design go beyond two-way communication and dialogue to include two-way bargaining, shared decision-making power, formal agreements, and mutual exchange. For instance, details on bilateral grievance mechanisms may be included in binding partnership agreements or in impact benefit agreements that are reached between businesses and First Nations organizations. Similarly, the establishment of multilateral grievance mechanisms may involve many-sided negotiations and consensus agreements among three or more parties. The specific procedures and criteria for substantive remedies of multilateral grievance mechanisms are memorialized in binding agreements and public commitments (see e.g.: International Accord, 2023).

In any mode of engagement, the ability of affected stakeholders to exercise real leverage over the design of an OGM comes as a matter of degree. Haines & Macdonald use the term “leverage” to refer to “...an actor’s ability to influence the imposition of costs or withholding of advantages from those they seek to influence.” (Haines & Macdonald, 2020, p. 842). They argue that, in practice, individual and community stakeholders often have very limited capacity to exercise real leverage as they “occupy a position of significant structural weakness, deriving from multi-dimensional sources of socio-economic marginalization and dependence on particular companies for their incomes or livelihoods” (Haines & Macdonald, 2020, p. 842). Given the difficulties that affected stakeholders have in pressing for a “bottom-up path to remedy” (Haines & Macdonald, 2020, p. 853), OGMs that are truly jointly designed and managed are quite rare outside of unionized workplaces (though they should be encouraged). Truly meaningful stakeholder engagement processes should improve opportunities for affected stakeholders to overcome power imbalances and exercise real leverage over the design and ongoing implementation of OGMs.

In unilateral OGMs, the company effectively owns the mechanism and controls the budget that is needed to operate it (see Table 14.1). The power to address the root causes of many of the most serious stakeholder grievances tends to lie with upper company management rather than the employees who manage the OGM on the ground. Ultimately, such power may lie with the company’s shareholders and investors. As Owen and Kemp have noted, in community grievances in the extractive industry, “[m]atters relating to the large-scale acquisition of land, for example, will ordinarily fall outside of what can be financially approved locally at the site” (Owen & Kemp, 2023, p. 6). As it happens, land and resettlement-related grievances are common in resource-intensive sectors, such as the mining industry and in agriculture. To give just one example, Barrick Gold has reported that affected stakeholders filed 113 grievances “related to land and resettlement” with the enterprise’s various grievance mechanisms in 2020 (Barrick Gold, 2021). Over the long term, the progressive development of truly *bilateral* and *multilateral* OGMs (with the participation of affected stakeholders) has greater potential to address the underlying structural and power imbalances that tend to limit the leverage that affected stakeholders have in *unilateral* company-controlled OGMs.

The aspiration to move towards MSE in the design and ongoing implementation of grievance resolution processes is reflected in advice given by some industry associations and

multistakeholder initiatives. For instance, the Mining Association of Canada recommends an “External Stakeholder Advisory Panel” (MAC, 2015, p. 33). MAC proposes that “with the right mix of stakeholders,” advisory panels can “help in the design of the site-level GM and in the oversight of its operation” (MAC, 2015, p. 33). This is commendable advice; nonetheless, it should be noted the advice given remains within the *unilateral* paradigm that is described in Table 14.1, as evidenced by subsequent statements that call for consultation with local communities rather than the joint design of OGMs (MAC, 2015, p. 34).

Electronics Watch, a multi-stakeholder initiative that focuses on public procurement in electronics supply chains, strongly advocates for more stakeholder involvement in the design and operation of grievance mechanisms. In December 2023, Electronics Watch issued a statement of Principles of Worker-Driven Remedy that calls for “[w]orker participation in design and implementation” of remedy (Electronics Watch, Principle 7.). Remedies, according to Electronics Watch, should be “co-defined by workers” (Electronics Watch, Principle 9.) and “[a]s appropriate, workers, trade unions, worker representatives and human rights defenders should take part in the design of remedy mechanisms...” (Electronics Watch, Principle 7.). Moreover, Electronics Watch asserts that within such processes, gender inequalities should be recognized and “women workers and their representatives should take an active part in the remedy process starting from its design...” (Electronics Watch, Annex 1., para. 2). Here, the aspiration for greater inclusion of stakeholders in the design and implementation of grievance mechanisms is embedded into a normative framework to guide businesses and stakeholders in the future.

### **Meaningful Engagement with Affected Stakeholders in the Development of OGMs**

Affected stakeholders may be able to influence the design and ongoing implementation of OGMs in varying degrees through two primary means: i) participating in company-led stakeholder engagement processes (as characterized in Table 14.1); and ii) autonomous advocacy and organized political activities, independent of any process led by the company or other organization (see, e.g., EarthRights, 2022; Kaufman & McDonnell, 2016). The effect of this dual pathway for stakeholder influence is that all modes of stakeholder engagement potentially involve two-way communicative processes, even if a company or other organization maintains formal control over the development and implementation of the grievance mechanism.

Nothing in the UNGPs precludes the establishment of collaborative OGMs, such as community-driven OGMs (discussed below), and such initiatives should be encouraged and supported as widely as possible. Indeed, the ICJ argues that, “[i]t is necessary to dispel the assumption that an OGM must always be created and run by a company” (ICJ, 2019, p. 10). As reflected in Table 14.1, the degree of stakeholder engagement in the design and implementation of OGMs ranges on a continuum from minimal engagement in *unilateral* consultation to potentially “transformational” and *bilateral* engagement (on transformational engagement, see Bowen et al., 2010). While the ICJ acknowledges that the “predominant model of OGM is one led by a company,” the organization also discusses examples of alternative approaches that are “run by local communities and are accepted and used by companies” (See ICJ, 2019, p. 10).

Community-driven OGMs (CDOGMs) have been proposed as a potential community-empowering alternative to unilateral OGMs. For instance, in 2014, community leaders,

working in collaboration with NGO EarthRights International (EarthRights), proposed a pilot project to establish a CDOGM in Myanmar (Kaufman & McDonnell, 2016). The community leaders advocated for this alternative mechanism for several years; however, by 2022, the proposal had still not been adopted (EarthRights, 2022). Nonetheless, EarthRights reports that the efforts to establish a CDOGM has had positive influence on the development of the business proponent's grievance mechanism, and that the proponent had "signaled a willingness to make improvements to the mechanism based on community input" (EarthRights, 2022). In the United States, the "Milk With Dignity" program and "Fair Food Program" have been cited as examples of stakeholder-driven remedy processes (Angelini & Curphey, 2022, p. 496). These programs are based on a worker-driven social responsibility model of accountability that involves independent third-party monitors who investigate and resolve worker grievances with management.

Under the UNGPs, grievance mechanisms should be, "[l]egitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes" (UNGP, 2011, Principle 31(a)). The legitimacy of an OGM is tied directly to how it is perceived by rights-holders (Rees, 2011, p. 14), which, arguably, is also tied to the degree of meaningful stakeholder engagement in the development of the mechanism. The ICJ argues that OGMs that involve workers and communities in their design from the earliest stages and in ongoing implementation are "best fitted to resist charges of lack of independence and/or legitimacy" (International Commission of Jurists, 2019, p. 14). The ICJ recommends, therefore, that companies engage affected communities at the pre-design stage of developing an OGM (ICJ, 2019, p. 13). And yet, the ICJ also acknowledges that, in terms of the empirical evidence that they uncovered, "in no case did the ICJ find a whole [grievance mechanism] programme permeated by community/stakeholder participation that would lead to co-design and co-implementation" (ICJ, 2019, p. 45).

The UNGPs include a caution that "[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process" (UNGP, 2011, commentary to Principle 31). The wider political and juridical context in which a site-specific OGM is developed also impacts on its perceived legitimacy. In jurisdictions where human rights are routinely abused, and where there is a lack of legal accountability and access to justice, OGMs will struggle to gain legitimacy. The UNGPs address this dynamic in Principle 21, stating that legitimacy relates more broadly to "[a]ccountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct" (UNGP, 2011, commentary to Principle 31). Ultimately, what this means is that MSE in the design and ongoing implementation of OGMs must be carried out in ways that are responsive to, and feasible within, the wider political and juridical context in which the OGM is intended to function.

A key motivation given to companies for creating OGMs is to build "early warning systems" for avoiding the escalation of grievances (Ruggie, 2013). Avoiding escalation is thought to potentially benefit both the affected stakeholders and the company. MAC proposes that, "[s]ite level GMs are valuable business and relationship tools... [w]hen properly designed and implemented... they help to build trust and social license over time" (MAC, 2015, p. 39). Towards this aim, MAC calls on its industry members to, "[d]esign a site-level GM, in conjunction with local communities" (MAC, 2015, p. 39). At the same time, MAC refers to a desire in the resource industry for "scalability" in the design and function of OGMs (MAC, 2015, p. 39). Here, "scalability" refers to the ability of a firm to calibrate the size and complexity of an OGM to fit the operational context (or contexts), in alignment with the institutional

capacity of the firm (MAC, 2015, p. 26). The scale of an OGM is expected to vary depending on local conditions, and on whether it pertains to a single small-sized operation or a series of mega-projects. It should be recognized that the push to achieve large-scale OGMs that cover a wide spectrum of company operations across different regions may be in tension with the aspiration to conduct truly meaningful stakeholder engagement at the granular local level. To be effective, OGMs should be responsive to the very particular circumstances in which they are needed. They should not be based on a “scalable” one-size-fits-all approach.

### **Countering Skepticism and Lack of Trust Through MSE**

Despite industry’s call for MSE in the design of OGMs, Owen & Kemp observe the “corporate propensity to avoid recognizing the legitimacy of a grievance and the source of its cause...” (Owen & Kemp, 2023, at 12). Such skeptical attitudes likely reflect the that businesses should aim to minimize and quickly extinguish any grievances that are brought against them. However, it has been argued very convincingly that attempts to deflect stakeholder grievances are likely to rebound negatively on businesses over the long term (Kemp et al., 2016).

In speaking about the design of OGMs, businesses frequently raise the specter of having to contend with vexatious, opportunistic, and unfounded claims (see e.g., MAC, 2015, pp. 35–37; ICMM, 2019, p. 9). This concern was in the language of the 2008 UN Protect, Respect, Remedy Framework (this UN document provided the conceptual framework for the development of the UNGPs) which stated that “[p]roviding access to remedy does not presume that all allegations represent real abuses or bona fide complaints” (UN, 2008, para. 82, p. 22). Business concerns about illegitimate claims were also in Paragraph 91: “States should strengthen judicial capacity to hear complaints and enforce remedies against all corporations operating or based in their territory, *while also protecting against frivolous claims*” (UN, 2008, para. 91; author’s emphasis). In its guidance on OGMs, MAC addresses such concerns by advising companies to be very cautious about selectively excluding certain stakeholders on the basis of their perceived legitimacy. While a company may doubt the legitimacy of certain stakeholder groups, MAC states that often “such groups actually do represent at least a portion of the impacted community... [i]gnoring them can escalate conflict, and blind a company to legitimate grievances” (MAC, 2015, p. 37). Ultimately, MAC advises that when engaging stakeholders, “approaching third-party interests in good faith... is wise” (MAC, 2015, p. 37).

Skeptical attitudes are not held solely by business actors; indeed, affected stakeholders may not trust the companies that seek to engage with them. To address this challenge, MAC provides the following advice to companies:

At the outset, building trust and legitimacy requires a rights-based approach to the community that radiates caring, respect, understanding and empathy... [grievance mechanisms] become much more effective if respect and understanding of local communities is practiced at all times by all employees that interact with them.

(MAC, 2015, p. 33)

MAC’s guidance on OGMs calls for “[r]elinquishing control over certain issues and outcomes” (MAC, 2015, p. 33). Further guidance from MAC about just when and how “control” should be relinquished would provide much-needed clarity regarding this recommendation.

Such guidance should also address the ICJ's concern that community participation in the design of OGMs "is frequently below the levels required to create trust in the mechanism" (ICJ, 2019, p. 11).

In a different context, the UN Special Rapporteur on trafficking in persons concluded that trust, "can be achieved only when workers and workers' representatives are involved as central actors in the design, implementation and monitoring of remediation tools" (Special Rapporteur, 2019, para. 76). Here, further clarity about what it means for workers to be, "central to the entire remedy process," is needed. It is not clear if the intention is to promote *bilateral* modes of engagement, or whether inclusive *unilateral* approaches are regarded as adequate to achieve the trusting relationships that are sought (see Table 14.1). The Special Rapporteur's final recommendations call on businesses to "ensure that the [grievance] mechanism is designed in collaboration with workers and their representatives and consider having its implementation managed by a third party, including workers representatives, or a civil society party that is trusted by workers..." (Special Rapporteur, para. 84, p. 21). These recommendations reflect aspects of both *bilateral* and *multilateral* approaches, as they are described in Table 14.1.

MAC emphasizes that, "[b]uilding trust with local stakeholders and legitimacy for the site-level GM is one of the most important goals of any resource development company..." (MAC, 2015, p. 32). One can only agree with MAC's statement; and yet, it must be recognized that building trust through stakeholder engagement on the design of OGMs is a very challenging endeavor for companies. The skepticism within the industry that is sometimes shown towards stakeholder grievances is potentially matched by the doubting attitudes of affected stakeholders. A company that seeks to build trust with stakeholders must contend with the notion that trust among equals is a shared bilateral condition, it is not something that can be achieved on a unilateral basis, even with the best of intentions.

### **The Contentiousness of Grievances – Implications for MSE in OGMs**

Another challenge for undertaking MSE in the design and ongoing implementation of OGMs is the inherently contentious nature and quality of grievances. Even relatively minor grievances have the potential to grow into bitter disputes. For business decision-makers, whenever claims are brought against a company, some degree of concern about potential liability and financial risk lies in the background. The potential contentiousness of grievances is recognized implicitly in MAC's guide to OGMs, which notes that, "[a]lmost by definition, companies are implicitly admitting fault by implementing a site-level GM that accepts community concerns associated with their activities" (MAC, 2015, p. 33). A company's overarching concern about potential civil or criminal liability is reflected also in MAC's guidance, as well as concerns about the risks of admitting fault, even implicitly (MAC, 2015, p. 35). All things considered, MAC advises that companies should not call into question the motives of complainants and should project an "attitude of assistance" with a view to building trust (MAC, 2015, p. 37; note: this statement is attributed to A. Guaqueta, UN Working Group on Business and Human Rights).

Possibly the most complex and high-stakes community grievances that companies may face involve situations where there is outright opposition to development projects, such as open-cast mining or major pipeline construction. In such scenarios, stakeholder grievances that appear small at first have the potential to grow into more serious claims (Ruggie, 2013).

Where community opposition to a project is strong and well-organized, MAC's call for "[r]elinquishing control over certain issues and outcomes" (MAC, 2015, p. 33) is not likely to be heeded by companies. By the same token, stakeholders who oppose a project may not choose to enter into a dialogue regarding the development of an OGM – their goal would be to halt the operation, rather than facilitate it. In such scenarios, *unilateral* company-controlled OGMs are not likely to be the appropriate forum for resolving trenchant company–community disputes. Indeed, in such circumstances, the affected stakeholders may prefer to pursue judicial and political remedies. OGMs may have less relevance in these scenarios; nonetheless, human rights-respecting pathways for resolving conflicts between community stakeholders and businesses must be sought (see e.g. UNDP, 2022; see also: UNGP, Principle 19).

### **Engaging Stakeholders in OGM Investigations**

In order to substantiate a grievance and to determine the appropriate, rights-compatible remedy, it may be necessary to undertake investigations of the complaint. In *unilateral* OGMs, the company usually has firm control over how a grievance is investigated. However, the ICMM observes that "[i]ncreasingly, companies have involved the specific complainant(s) or affected stakeholder(s) in investigations to develop a shared understanding, overcome suspicions about company-led investigations and support joint problem-solving" (ICMM, 2019, p. 43). MAC recommends using "a joint investigative process" (MAC, 2015, p. 33). In some cases, an independent third party may be involved in the investigation of a grievance, in which case the investigator should engage meaningfully with the affected stakeholders.

The power imbalances that exist between companies and affected stakeholders come to the fore in the investigation of grievances. Civil society organizations have expressed concern that, in some cases, the data needed to properly investigate claims are controlled by the respondent company. Obtaining access to data and internal company information can be extremely challenging for complainants (see: Rights and Accountability in Development, April 2018, p. 5). In some cases, this information can only be obtained in the process of discovery in civil litigation.

Coumans raises concerns that company-funded OGMs in the extractive industry have done very little to mitigate the "extraordinarily large power imbalance" that exists between affected stakeholders and company legal and investigative teams (Coumans, 2017, 2018b, p. 2). Coumans' broader concern lies in the fact that some company-controlled OGMs are promoted locally where public judicial remedies and institutions are weak, inaccessible or unreliable (Coumans, 2017). Owen and Kemp contend that, "[w]ithout the safeguards or caveats of procedural justice... resource companies can unilaterally decide which parts of the grievance landscape they engage, and in which manner" (Owen & Kemp, 2023, p. 11). How can these power imbalances be addressed? In their detailed critique of the settlement agreement reached in litigation over the Fundão tailings dam disaster in Brazil, Nabuco and Aleixo recommend the establishment of "local decision-making spheres" to enable affected communities to develop their own tailor-made remedy programs (Nabuco & Aleixo, 2018, p. 153). In the case of large-scale industrial disasters, the ICJ argues that States should be involved in the creation of *ad hoc* investigative and response mechanisms (ICJ, 2019, p. 10). These experts argue generally that the operational investigation of grievances should not be left solely in the hands of companies.



### **Engaging Stakeholders in Determining Adequate Remedy**

In its 2017 report to the United Nations on access to remedy, the UN Working Group on Business and Human Rights stated that the adequacy of a remedy “should be determined with reference to the needs of rights holders seeking justice” and that “the effectiveness of a remedy should be judged also from the perspective of affected rights holders” (United Nations General Assembly, 2017, para. 20, 22). There can be little doubt about the importance of meaningful engagement with affected stakeholders in determining the substance of adequate remedy; at the same time, it is also critically important to be aware that subjective and “participative processes may themselves lead to outcomes that conflict with human rights standards and principles” (Thompson, 2017, p. 79). A study by the ICJ reveals that the very nature of adequate and effective remedy is “frequently contentious” (ICJ, 2019, p. 12).

The International Council on Mining and Metals (ICMM) calls for meaningful engagement with affected stakeholders on the remedial outcomes of OGMs. Specifically, their 2019 guidance calls for, “[e]ngaging meaningfully with at risk or vulnerable groups about the grievance process and outcomes” (ICMM, 2019, p. 6). In their view, independent grievance resolution processes should go “further than simply enhancing the involvement of community members in the grievance mechanism,” they should also involve “the company ceding control over the mechanism to an independent body” (ICMM, 2019, p. 45). Further guidance from the ICMM about when and how control over OGMs should be ceded to independent bodies is needed. With regards to determining the appropriate, rights-compatible remedy, MAC recommends that “[w]hen [a] resolution cannot be achieved through the site-level GM process, companies and complainants can retain a neutral and respected third party, such as an elder, leader of a faith-based organization or trained mediator, to try to facilitate a mutually-acceptable resolution” (Mining Association of Canada, 2015, p. 33).

### **Conclusion**

This chapter has provided a multidimensional assessment of the current status of MSE in the design and implementation of OGMs. As shown in this chapter, experts, industry associations, and civil society organizations frequently recommend that companies should involve affected stakeholders in joint-design and co-ownership of these mechanisms (this author supports this recommendation). Nonetheless, the chapter concludes that empirical studies examining the actual extent of such involvement are largely undeveloped. The chapter finds generally that the empirical literature on the design and effectiveness of OGMs is in an early stage. One notable exception is an important 2023 study by Harrison & Wielga. They reveal a critical gap in the UNGP framework by demonstrating that it is possible for OGMs to satisfy the “effectiveness criteria” outlined in Principle 31 of the UNGPs while still falling short on delivering effective remedy to rights-holders (Harrison & Wielga, 2023). Going forward, the challenge is to find ways to address this effectiveness gap and to ensure that “the right to a remedy” (United Nations General Assembly, 2005) is truly supported by OGMs and not undermined by them.

Despite mixed reviews of the effectiveness of OGMs in providing remedy, normative standards for their development continue to be refined. In its detailed policy agenda of 2020, the Office of United Nations High Commissioner for Human Rights called for greater involvement of affected stakeholders in the design and ongoing operation of OGMs (Office of the High Commissioner for Human Rights, 2020). In 2019, the ICJ proposed a set of

performance standards for OGMs entailing “a model of OGM that is created and administered jointly by companies and their employees, external stakeholders, or at least has a strong participation by the latter groups...” (ICJ, 2019, p. 98). While the spirit of the ICJs recommendations is entirely laudable, the motivational and practical challenges for companies that lie in implementing inclusive models should not be understated. Company decision-makers have mixed motivations for involving stakeholders in the development of grievance mechanisms. MSE is not undertaken by companies solely to respect human rights in accordance with the due diligence provisions of the UNGPs; it is also undertaken if there is a positive “business case” for doing so (see: Prno et al., 2021). Broad calls for joint-design and co-implementation of OGMs must be reconciled with the fact that companies around the world are very strongly incentivized within existing legal and economic frameworks to maintain firm control over *unilateral* grievance mechanisms. Truly *bilateral* and *multilateral* modes of engagement have tended to develop gradually in response to sustained “bottom-up” social mobilization efforts of affected stakeholders in different contexts (see: Haines & Macdonald, 2020, p. 853). It is important to keep in mind that the contemporary practice of formal collective bargaining in party-to-party *bilateral* contract negotiations developed historically out of decades of political upheaval, strikes, and legal challenges brought by workers. An example of how social mobilization by local communities over many years eventually led to bilateral and multilateral modes of engagement with business and government is provided in the chapter in this book by Abdala and Veiga (Chapter 17, pp. 2–9).

While progress has certainly been made, this chapter has shown that the development and implementation of effective alternatives to the company-centric *unilateral* model of OGMs remain exceptional in most contexts. Much more needs to be done to spur a shift towards *bilateral* and *multilateral* approaches to MSE (see Table 14.1) in the development and implementation of OGMs. To reach this goal, companies, governments, and other organizations must satisfy, and go beyond, the standards articulated in the UNGPs, OECD Guidelines, and other emerging normative frameworks such as the Principles of Worker-Driven Remedy (Electronics Watch, 2023). Truly meaningful stakeholder engagement in the design and ongoing implementation of rights-respecting grievance mechanisms will be supported by progressive, stakeholder-centered transformations in the very nature of corporate law, corporate governance, market regulation, and business practices.

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# MEDIATION TO GENERATE MEANINGFUL REMEDY FOR AFFECTED PEOPLE

## The Heineken/Bralima Case as an Example of Conflict Resolution within the Framework of OECD National Contact Points

*Maartje van der Putten*

### **Introduction**

The concept of meaningful stakeholder engagement (MSE) is probably as old as the moment human beings started to talk and negotiate for the purpose of solving conflicts. However, in today's complex, globalized society, MSE is of crucial importance. The substantial amounts of capital crossing the globe and the operations of multinational corporations, the financial sector and multilateral organizations such as the Multilateral Development Banks often cause harmful impacts to communities, even when projects are designed to be for the benefit of all. The number of so-called 'accountability mechanisms' that incorporate MSE practices has increased over the past decades. Some of these mechanisms are intended to provide remedy for those affected by serious, adverse impacts caused by projects or investments of the private sector, including the private financial sector and the multilateral financial institutions, such as the World Bank Inspection Panel.<sup>1</sup>

The focus of this practice note is, first, on the National Contact Points (NCPs) of the Organization for Economic Cooperation and Development (OECD). More specifically, the chapter describes the history of the NCPs and their mandate.

Thereafter, I describe a remarkable complaint<sup>2</sup> against the brewery company Heineken. In December 2015, the Netherlands NCP received a notification (complaint) from three former employees of Bralima Heineken in the Democratic Republic of Congo (DRC), a wholly owned subsidiary of Heineken,<sup>3</sup> representing approximately 168 persons formerly employed by Bralima. The notification concerned allegations of an unjustified dismissal of 168 Bralima employees between 1999 and 2003, irregularities and deliberate omissions in the individual redundancy schemes for the dismissed workers and serious errors in the mass dismissals by Bralima in the period 1999–2003, contrary to DRC law.<sup>4</sup> After a lengthy process of handling the case by the NCP, which included mediation between the parties, the case ended with an

agreement between the parties and the payment of substantial financial compensation. For the OECD, this was the first NCP case with a financial remedy as outcome.

### **The OECD NCPs and Their Mandate**

Headquartered in Paris, the OECD is a forum or intergovernmental organization uniting 38 governments of democratic states with an open-market economy that cooperate on global matters. One of the outcomes of this cooperation between the OECD countries is the OECD Guidelines for Multinational Enterprises, a set of remarkably high standards for responsible business conduct, including e.g. economic, social, labor rights, environmental and human rights issues. The Guidelines were most recently updated and amended in 2023 and are now known as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Although NCPs have existed since 1984, it was not until the 2000 revision of the Guidelines that detailed procedural guidance was provided on the role of the NCPs, thus giving them a stronger role to deal with complaints related to the Guidelines. The role of the NCPs has been substantially strengthened since then.

The previous (2011) update of the Guidelines, and even more so the latest 2023 version, incorporate human rights issues and are important sources on responsible business conduct for legislators in the European Union. At the time of writing this practice note, tripartite negotiations were ongoing between the European Union, the European Council, and the European Parliament concerning an EU Corporate Sustainability Due Diligence Directive. The directions of the OECD Guidelines and the UN Guiding Principles on Business and Human Rights<sup>5</sup> are the leading soft law inspiration for existing and proposed EU legislation on these matters.

### **Function of the NCPs**

Today, all OECD member countries are supposed to have an NCP with two main functions: (1) raise awareness and ensure that the Guidelines are known by society and companies, and (2) offer good offices and contribute to resolving issues related to the non-observance of the Guidelines by companies. The NCP process sometimes looks like a legal process, but that is precisely what it is not. Solutions must be found outside the court. So, MSE is crucial for an NCP engaged in resolving a specific instance (complaint) or problem at the dialogue table: a mediation or problem-solving process.<sup>6</sup>

Although this remains a somewhat new process since it was first introduced with the Guidelines, when it comes to due diligence for most companies, the NCP process can help them resolve an issue outside the court (no legal costs), allowing them to prevent negative press about their activities. The NCP process and its outcomes can also provide lessons for companies for future situations. For example, it may provide learning on the implications of the OECD Guidelines and steps the OECD expects companies to introduce for responsible business conduct.

A good example of this is what due diligence means for many companies and what it should entail according to the OECD Guidelines. For many companies, due diligence is still a matter of investigating the financial and other implications of any new project or investment as well as the potential financial risks associated with such an action. This is often a profit-driven exploration and a traditional transactional or “know-your-counterparty” (KYC) due

diligence process.<sup>7</sup> However, the wording of the OECD Guidelines is different, emphasizing a due diligence approach with an outward risk orientation. The OECD notes that “The concept of due diligence under the OECD Guidelines for MNEs involves a bundle of interrelated processes to identify adverse impacts, prevent and mitigate them, track implementation and results and communicate on how adverse impacts are addressed with respect to the enterprises’ own operations, their supply chains and other business relationships.”<sup>8</sup>

The work of the NCPs could be positive for both parties: the complainants that lodged a complaint; and the company concerned, when an agreement is reached. Yet there is still a long way to go for the global business world to understand the strength and influence of the OECD and their Guidelines, even though the OECD Guidelines are today an international standard.

### **The Complaint Concerning Heineken and Its Activities in the DRC**

In the eight years I was a member of the OECD NCP in the Netherlands,<sup>9</sup> I noticed that in some cases the enterprises were rather unfamiliar with the OECD Guidelines and often surprised when a complaint arrived concerning their activities and its impact on people. In almost all cases, due diligence was (and is) a major factor when activities are discussed. For many companies, the necessity of a timely environmental, social, or human rights due diligence assessment before they take any action still remains a new arena. Many companies are still surprised to know that they can cause harm or directly or indirectly be linked to harmful conduct via their clients, contractors, or investments.

The role of the NCPs regarding meaningful stakeholder engagement has become visible over the past decade. The Netherlands NCP received a substantial number of complaints concerning large multinationals with international operations. Every time it was like an art convincing management to come to the dialogue table and trust the NCP’s impartiality, predictability, and equitability while offering good offices, such as mediation. Indeed, as previously stated in this book’s introductory chapter,<sup>10</sup> it is not a process of ‘just compliance with the formal legal demands.’ The work of a mediator is multidimensional.

To find common ground as a basis for the dialogue, it is necessary that meetings take place between the mediator(s)<sup>11</sup> and each party separately first. Does the mediator believe there is enough common ground for it to make sense to try to find a solution? Can an atmosphere be created in which the stakeholders from such different backgrounds can listen and understand each other?<sup>12</sup> Can the participants imagine themselves in the position of another stakeholder?

The goal and the scope of the dialogue, a time schedule and structure of the dialogue, what will be discussed and what not, what can be expected from the mediators, and who will be at the dialogue table – all these things have to be agreed and recorded in the terms of reference (TOR) and signed by all the parties. The scope of the dialogue will normally have been noted already in the initial assessment by the NCP.

In that sense the Heineken case was no different to other cases. It took time and several separate meetings in The Hague and Amsterdam to bring the company’s management onto the same page as the complainants, i.e. for them to recognize that something had gone wrong, and that a resolution means that the parties must work together to find a solution. The company’s management must be convinced that there is something in the NCP process for them too. This can be more than a solution to the conflict at stake. I will come back to that later. During the initial phase we noticed that the company’s management started taking an interest in what happened in the DRC, and the NCP process then became a challenge for the managers representing Heineken. Undoubtedly, they were given a broad mandate from the Heineken

top management: 'solve the problem'. The latter is crucial for any mediation to succeed. Only when both stakeholders send representatives to the table<sup>13</sup> who are willing to participate in the dialogue and who have a mandate from the company or organization to move forward to find a solution, can it work?

Selecting and agreeing on the venue for the mediation dialogue was complicated. Due to the involvement of a delegation of former workers of Bralima Heineken in Bukavu in the DRC, it was decided to organize the dialogue in the region. Finally, the Netherlands embassy in Kampala, the capital of Uganda, offered the use of a large meeting room and services for the delegations for a week. The official status of the venue probably also contributed to the final positive outcome. The first day was spent discussing again the various issues raised<sup>14</sup> by the complaint with the company in separate meetings.<sup>15</sup> Then three days were spent facilitating the parties' understanding of one another and their positions and concerns, and creating and agreeing on a roadmap setting out what steps had to be taken, by whom, and within what time frame.

A remarkable moment I will never forget: at the end of the first day, the delegation of complainants from the DRC went out for a drink. My colleague from the NCP, Melanie Peters, and I passed the delegation outside the embassy and had a chat. A member of the delegation said excitedly "We already won". We were somewhat surprised since the dialogue had just begun. He then said "Now we finally have a dialogue with the relevant stakeholders around the table. This is the first time after so many years they listen to us." The emotion expressed by him is not uncommon in many of the cases handled by the NCPs and other accountability mechanisms. Half of the work is about recognizing and listening to people that have been harmed or could be harmed by the projects and activities of companies and institutions in a timely manner, i.e in the design phase.

Not that long after the week in Kampala, a group of Heineken managers went to Bukavu, the hometown of Bralima Heineken in the DRC. In a general meeting with all the complainants, management explained the procedure they were following and talked individually with each of the former worker who years before had been dismissed, or their relatives in the case of former workers who had passed away in the meantime. The files of each of the former workers were made as complete as possible by the parties working together.<sup>16</sup> In the weeks after the visit to Bukavu, the information was developed for everyone with a proposed payment per former worker or their relatives.

A second meeting between the delegation of the former workers, the Heineken management and the NCP mediators then took place in the Netherlands embassy in Paris.<sup>17</sup> The payments offered by Heineken to the workers, recorded in 168 files, came to Paris in a huge suitcase that the Bukavu delegation had to take home. In Bukavu, the workers had to accept the proposed payments.<sup>18</sup> The NCP understood that after the general acceptance by the delegation of workers in Paris and the delivery of the personal files, some Heineken managers travelled back to Bukavu to receive the acceptance of all former workers. Afterwards, one manager said "This was a new experience for me. I can manage a brewery, but this was the first time I found myself in the world of development cooperation. An extremely special experience." A year later, the NCP was informed by Heineken they had created their own grievances mechanism as directed by the United Nations (UN) in the UN Guiding Principles for Business and Human Rights.<sup>19</sup>

The positive outcome of the Heineken complaint filed with the Netherlands NCP exemplifies how stakeholders together can create an atmosphere in which solutions that are acceptable to both sides can be found. After all, the successful outcome of the Heineken case was primarily down to the participants in the process. The role of the NCP in all of this was



mainly one of guiding the parties in the process and providing mediation. Success is never guaranteed. It always depends on the commitment of the people around the dialogue table and their willingness to reach an agreement.

### Notes

- 1 The independence of the World Bank Inspection Panel that published several critical reports on World Bank projects has today unfortunately been undermined by the influence of the World Bank's management on the work of the Panel.
- 2 While this chapter uses the word complaint, the OECD uses the word 'Specific Instances' for cases of which the NCPs are notified.
- 3 Ministry of Foreign Affairs of the Netherlands (2017), National Contact Point, Final Statement: Former employees of Bralima vs. Bralima and Heineken, 18 August 2017.
- 4 Ministry of Foreign Affairs of the Netherlands (2017), National Contact Point, Final Statement: Former employees of Bralima vs. Bralima and Heineken, 18 August 2017.
- 5 The OECD Guidelines are soft law.
- 6 In case the mediation or MSE fails, the appointed mediators of the NCP will then send back their task to find a solution, and the NCP officials will publish their findings concerning the role of the company that did not adhere to the OECD Guidelines, without the input of the parties. This end report will always be made public and published by the OECD.
- 7 OECD (2018). OECD Due Diligence Guidance for Responsible Business Conduct, p. 16.
- 8 OECD (2018). OECD Due Diligence Guidance for Responsible Business Conduct, p. 16.
- 9 I was a member of the Dutch NCP from 2013 to 2021, from 2018 to 2021 as Chair of the NCP and as mediator involved in the complaint against Heineken. In this chapter I record only the process and procedures followed in this case.
- 10 Buhmann, K., Fonseca, A., Andrews, N., & Amatulli, G. (2024). Meaningful stakeholder engagement: the concept, practice and governance. In K. Buhmann, A. Fonseca, N. Andrews, & G. Amatulli (Eds.), *The Routledge international handbook on meaningful stakeholder engagement*. Routledge.
- 11 In the Heineken case the Netherlands NCP decided that two NCP members, Dr Maartje van der Putten and Dr Melanie Peters, as mediators, would take up the Heineken case with the support of Alex Muhweezi (mediator) from Uganda, and could do a pre-study in the DRC for the NCP about the issues at stake. Another argument to ask the support of Muhweezi was a cultural element. The two mediators from Europe did not want to lead the mediation without a mediator from Africa, since he by nature had all the necessary knowledge about the culture of the complainants from the DRC.
- 12 After a complaint arrives, the NCP will after registration of the complaint first study the admissibility of the case and follow up with the publishing of the Initial assessment in what a complaint is declared admissible or not.
- 13 A mediator should create a trustful and safe atmosphere. Soon the large conference table was baptized 'the kitchen table'.
- 14 Ministry of Foreign Affairs (2017). National Contact Point Final Statement: Former employees of Bralima vs. Bralima and Heineken, 18 August 2017, p. 1.
- 15 As mediator I can only speak about the process but not about the content of the dialogue, other than what is already in the public domain, e.g. what is known from the NCP's reporting on this case.
- 16 The NCP mediators were not part of this event in Bukavu. After the session in Kampala, the level of trust between the stakeholders was good, and the presence of the NCP was not necessary. The NCP was kept informed.
- 17 Due to complicated EU visa rules for the DRC delegation, it was decided not to hold the meeting in the Netherlands but in Paris.
- 18 Due to the confidentiality rules in a mediation process, it is not appropriate to write about amounts. They were substantial.
- 19 The UN Guiding Principles on Business and Human Rights, p. 31, para. 29 state: "To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."

## **PART III**

# **Meaningful Stakeholder Engagement in Sectoral Contexts**



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# AN AGENTIAL CONSTRUCTIVIST ANALYSIS OF MEANINGFUL STAKEHOLDER ENGAGEMENT IN AFRICA'S CRITICAL MINERALS SECTOR

Insights from the Democratic Republic of Congo

*Surulola Eke, J. Andrew Grant, Evelyn N. Mayanja  
and Olusola Ogunnubi*

## Introduction

Although transitioning to renewable energy sources is an important strategy to address climate change, relatively little attention has been allocated to how this transition is impacting community members who reside near the mining sites of 'critical minerals' (also referred to as 'green minerals', such as cobalt, copper, lithium, graphite, nickel) and surrounding areas. Concomitantly, it is unclear whether mining activities and supply chains associated with global calls to participate in the 'just energy transition' can be reconciled with potential gains for the environment. The Democratic Republic of Congo (DRC) is among the very top exporters of critical minerals (Barrera, 2020; Crundwell et al., 2011) and is therefore a vital country to examine in terms of its agency and interactions with global, regional, and local governance efforts. For example, while the DRC Mining Code (2018) obliges mining companies to consult with local authorities, the 'voices' of the very people living near the mining sites – and who are affected by mining the minerals and metals for green energy – are rarely incorporated as part of these debates and problem-solving efforts.

Guided by an agential constructivist theoretical approach and informed by fieldwork including participant observations in Africa and global governance initiative meetings as well as other forms of primary data, this chapter examines and compares the extent to which stakeholder consultation regimes, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) and Africa Mining Vision (AMV), promote public goods envisioned by environmental and social impact assessments in Africa. We argue that their influence is minimal because they foster episodic stakeholder engagement and do little to change the disequilibrium in power relations between transnational mining firms and local communities. The chapter begins with a conceptual and epistemological discussion of Meaningful

Stakeholder Engagement (MSE), which proceeds in two parts. First, we investigate the epistemological origins and premises of MSE. Second, we then offer a new conceptualization of MSE as a means of building upon – and contributing to – the extant scholarly literature. We then assess UNGPs and AMV in terms of the extent to which their initiatives, pronouncements, and guidelines promote environmental and social impact assessments within the African mining sector. Insights from recently conducted fieldwork in the DRC on its critical minerals sector inform our analyses, and we conclude the chapter by offering reflections on the prospects of a ‘performance gap’.

### **Meaningful Stakeholder Engagement (MSE): Conceptual Premise and Disciplinary Fields**

Agential constructivism is a particularly apt theoretical approach to MSE because it emphasizes the importance of understanding how state actors *and* non-state actors engage in norm generations, disseminations, implementations, contestations, and localizations while combining symbolic, legal, and material considerations. These forms of engagements are deliberately stated in the *plural*, which reminds observers that state actors and non-state actors alike should not be treated as unitary units. Rather, the constituent actors within these categories may have different (and possibly diverging or opposing) interests, strategies, and objectives. Non-state actors of relevance in mining sector governance range from transnational and local firms to grassroots and transnational civil society organizations to artisanal miners and ‘middlemen/supporters/negotiants’ to traditional authorities as well as women and youth associations.<sup>1</sup> For instance, substate actors may engage in various aspects of norm dynamics in a different way and with different objectives than their national-level counterparts. Even among state actors themselves, there is much variation. Hence, this reflexive approach also considers the Great Power–Marginal States dynamic in norm (re)production and diffusion.<sup>2</sup> What is more, a reflexive approach to norm dynamics is consistent with agential constructivism’s emphasis on epistemological and ontological pluralism. Agential constructivism seeks to unpack state and non-state actors as part of its call to scholars to move away from treating such actors as unitary entities (Grant, 2018a, 2022; Grant et al., 2021; Grant & Wilhelm, 2022).

As a conceptual and management approach, stakeholder engagement is increasingly becoming a core function of any sustainable business practice. MSE not only attempts to bring state and non-state actors together, but also promotes the norms of consultation, dialogue, and inclusiveness, and, to a lesser extent, transparency, accountability, and sustainability. These norms are constitutive norms of corporate social responsibility (CSR) – a core aspect of the UNGPs and an implicit aspect of the AMV. Agential constructivism sheds light on the dynamics of how these norms shape – and are shaped by – state and non-state actors – known as stakeholders in the MSE literature. In unpacking actor identities, agential constructivism also distinguishes between Great Power states – defined by the sheer size of their economy and military prowess, and their resultant influence in norm production – from peripheral states, which are economically incomparable to the former, but contribute to the reproduction of global extractive norms because of both the volume and value of their mineral deposits.

As the introductory chapter (Buhmann et al., 2024) outlines, stakeholders are individual persons or organizations who may affect or be affected by a company or project’s activities. According to the OECD (2017, p. 19), stakeholders are “persons or groups who have interests

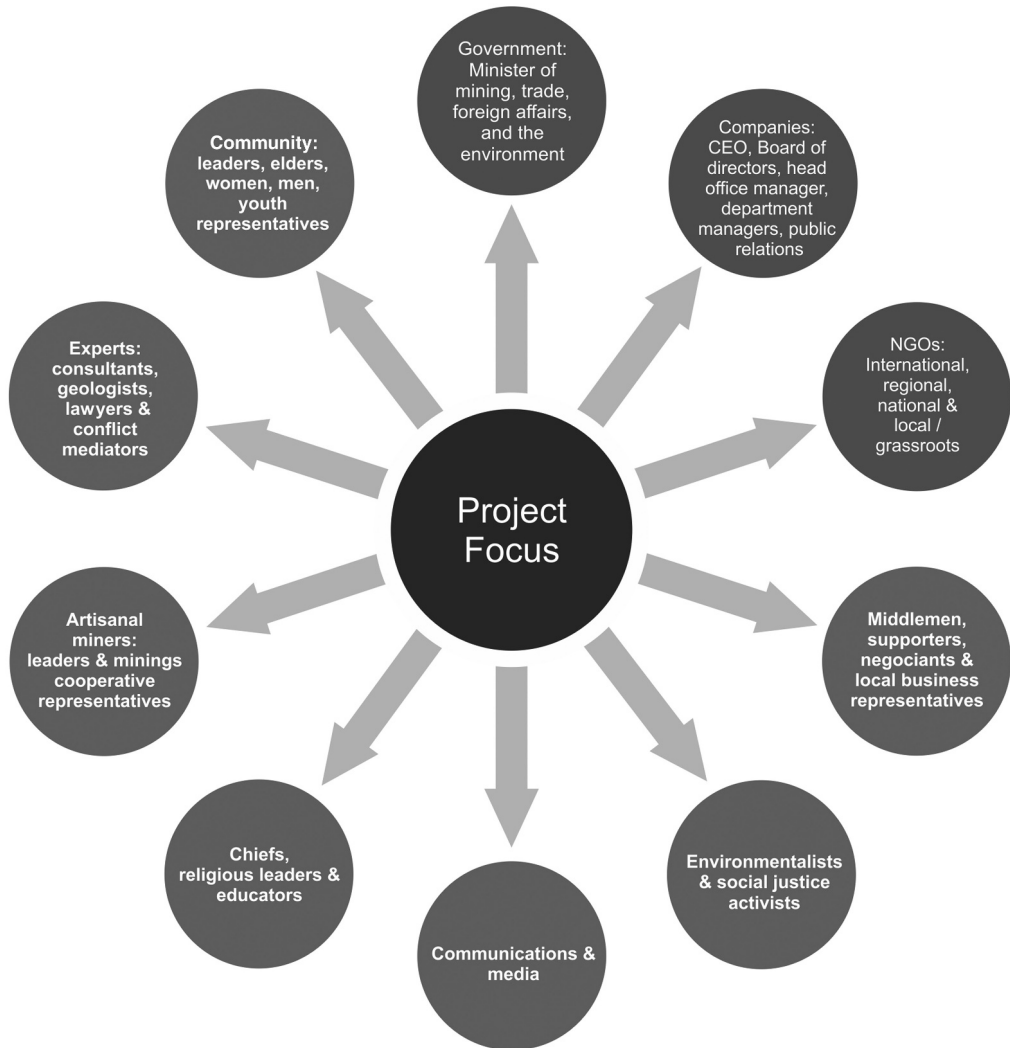
that are or could be impacted by an enterprise's activities". Stakeholders are therefore recognised by a number of factors including "geographic boundaries location, recognized bodies or institutions, income groups, land ownership or occupation, legal requirements, and real or perceived views of the issue under dispute" (Panda & Barik, 2014, p. 7).

Meaningful stakeholder engagement is important for corporate interventions to produce desired outcomes. For instance, despite huge CSR investments of over €476 billion in Europe and more than US\$66 trillion from over 1600 signatories of the Principles for Responsible Investment (PRI), reported cases of human rights abuse, economic, environmental, and social impacts, threats to livelihood, displacements, and violent conflicts arising from the business practices in communities continue to increase (Maher & Buhmann, 2019). These failures, as Maher and Buhmann (2019) note, are symptomatic of existing top-down guidelines on stakeholder engagement that has resulted in divestment of international investment by development agencies in response to critics of human rights impact areas.

The above reinforces the need for an impact assessment process that is community-driven in its design, implementation, monitoring, and evaluation. For example, as we have witnessed as part of our fieldwork conducted in the DRC, the communities of Ruashi, Luisha, Fungurume, and Kolwezi have been displaced and endured environmental catastrophes such as deforestation and pollution, increased crime, unemployment, and poverty. More than 300 people we have so far interviewed and observed attest to not being consulted by any of the mining companies operating in the area. Local chiefs are frustrated by being dictated upon and threatened by government authorities, police, and military when they insist on meaningful engagement that responds to people's needs and environmental protection.<sup>3</sup>

However, the DRC's Mining Code specifies that communities affected by a mining project and mining companies, together design specifications of engagement locally known as the *Cahier de charges* for the implementation of community development projects (DRC Mining Code, 2018, article 285). What is more, companies holding mining licenses are required to contribute 0.3 per cent of annual turnover towards socio-economic and industrial development of the affected communities (DRC Mining Code, 2018, article 285) – though it is unclear whether such disbursements are reaching these communities. These conditions on the ground contrast with the calls for respecting the perspectives of stakeholders is an important component of global sustainable governance frameworks for responsible business conduct as outlined by the UNGPs, UN Sustainable Development Goals (SDGs) (UN, 2018), UNFCCC Conference of the Parties (COP) 3, 4, and 5 (Bäckstrand and Lövbrand, 2006; Cadman et al., 2018; Kasemir et al., 2000), and OECD Due Diligence Guidance for Multinational Enterprises (Maher & Buhmann, 2019). These normative frameworks, which draw attention to the role of meaningful stakeholder engagement, were designed to address global governance gaps that arise from environmental injustices and business-related human rights abuses (Environmental Justice Atlas, 2018). As depicted in Figure 16.1, engagement with stakeholders can take the form of consultative processes and organized dialogue, formal implementation partnership and multi-stakeholder initiatives designed to effectively resolve grievances and provide targeted remediation.

Essentially, in current-day practice, and echoing the connected steps displayed in 'The consultation-collaborative implementation continuum' in UN Global Compact Network Germany (2022, p. 4), meaningful stakeholder engagement should be conceptualized per the following stages. It begins with effective consultation with stakeholders through various dialogue platforms and stakeholder initiatives leading ultimately to collaborative implementation and partnership between stakeholders and the organization.



*Figure 16.1* Key actors in MSE efforts

The literature on meaningful stakeholder engagement (MSE) is developed under the broad scholarly studies on due diligence process, which the introductory chapter to the collection discusses. Although the literature is still scant, MSE is conceptualized from a variety of academic literature: human rights, business ethics, global political economy, impact assessment, and stakeholder theories. As an emergent multidisciplinary discourse, MSE is subject to multiple definitions that introduce a variety of meanings depending on the underlying epistemic tradition. Because of its interdisciplinary footprints, MSE remains unclear in its definition. However, the understanding of stakeholder engagement is widely applied to explain the relationship between organizations and stakeholders and the various outcomes of these relations (Kujala et al., 2022). MSE aims to identify impacts, needs, and concerns from the perspective of affected stakeholders. The Office of the UN High Commissioner for Human Rights defines

MSE as “an ongoing process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand and respond to their interests and concerns, including through collaborative approaches” (United Nations High Commissioner for Human Rights, 2012, p. 8). This human rights-focused definition highlights the relevance of continuous dialogue and engagement that is focused on identifying affected stakeholders.

In the first place, stakeholder engagement that is meaningful must be an *ongoing* two-way exchange between stakeholders and the company. Meaningful stakeholder relations are therefore intended to be mutually beneficial to all parties. This is what accumulates into the social licensing to operate (SLO) required of a business (Mercer-Mapstone et al., 2018). Secondly, MSE is focused on individuals, legitimate representatives of communities, and other stakeholders affected (or likely to be affected) by the company's operations. This means ensuring a broad representation of stakeholders that covers not only friendly ones but also those that may be averse to the company's plans. This also means recognizing the heterogeneous nature of local communities in terms of the variety of groups and their distinctive impacts.

From a more general, social scientific perspective, Buhmann et al. (2024, p. 435) contend that “Meaningful stakeholder engagement forms an assumed part of social, environmental or human rights impact assessment processes related to sustainable development globally”. According to the authors, the goal of MSE is to improve inclusive decision-making, equity, and local participation in a way that builds social capital. MSE opens up space for engagement-oriented interactions that take place between a business entity and relevant actors that are affected by business decisions – with the goal to use the feedback from the latter to improve business practices. Therefore, MSE influences decision-making through a practical process that impacts business operations in accordance with international good practices. MSE is also people-focused and aware of their direct influence over corporate decisions. A bottom-up approach to stakeholder engagement ensures that initiatives for CSR and impact assessment are led by affected groups (Maher & Buhmann, 2019). From this business-ethics theoretical lens, MSE emphasizes inclusive decision-making that promotes equity, enhances local participation in the policy process, and builds the necessary social capital required for a project to succeed.

In other literature, MSE is designed to meet a specific purpose and based on mutual trust. It is also focused on the rights of the stakeholders and informed by collective ownership of the outcome while accommodating the respective social context in which the engagement takes place. Similarly, O'Faircheallaigh (2010) examined meaningful public participation in the context of stakeholder engagement for public decision-making based on Environmental Impact Assessments (EIAs). His definition emphasizes the participation of the public based on democratic principles and capacity to influence decision-making that affects them. MSE involving the public is targeted at empowering marginalized groups, such as local communities, and, within them, minorities, youths, and women. According to O'Faircheallaigh (2010), equitable distribution of political power and responsive decision-making structures are the fundamental goals of public participation in EIAs.

Arguably, a core purpose of *meaningful* stakeholder engagement is to ensure that private sector actors are not merely listening to the concerns of stakeholders, but also engaging in a productive and constructive manner in designing and leading investment agendas in a way that improves their livelihood. To this end, MSE is an essential part of a company's efforts to meet its responsibility of respecting the human rights of the people and communities in which it conducts its business. A critical part of this is listening to affected stakeholders and paying attention to their perspective in the internal decision-making of the organization. Through



MSE, an organization is better informed of the impact of its decision-making and identifies ways to reduce the severity of these impacts. To effectively do so, its methodologies and methods must put the local culture, gender, values, and customs of stakeholders at the centre of the engagement process rather than leading the engagement in a top-down manner (Aftab, 2016; Maher & Buhmann, 2019; Owen & Kemp, 2013). In essence, MSE seeks to align the specific experiences of directly impacted populations insofar as tracking and assessing the impact of decision-making.

A publication by the Multilateral Financial Institutions Working Group on Environmental and Social Standards outlines ten principles for MSE: (1) ongoing and iterative stakeholder consultation process; (2) representativeness of different categories of stakeholders; (3) equitable and non-discriminatory; (4) allocates enough resources for staffing and capacity building; (5) transparent and based on factual information; (6) developed from prior information about the relevant aspects of the engagement process; (7) respectful and free of intimidation or coercion; (8) respects the confidentiality of information from stakeholders; (9) respectful of participants' time; and (10) systematically documents and publicly discloses relevant aspects of the process (Kvam, 2019). These principles, according to the World Bank, should be applied to all elements, stages, and procedures of the consultation process and mainstreamed in all operations "to give citizens a stake in decision-making to improve development outcomes."

Projects occur in varied settings, including those that could be categorized as complex and controversial, leading to high-risk projects that follow different steps to achieve MSE. For example, the Multilateral Financial Institutions Working Group on Environmental and Social Standards further note ten elements of MSE that should be engaged at four different stages of complex projects. The stages include: (i) the concept and identification stage during which potential risks and opportunities must be conceptualized; (ii) the preparation and approval stage during which risks and opportunities are analyzed in detail; (iii) the implementation stage during which social and environmental actions and mitigation strategies are accomplished; and (iv) the completion and closure stage that must focus on project evaluation and needed transition. Kvam (2019) adapts MSE to the mining sector and helpfully identifies consultative elements in accordance with various stages of mining (see Table 16.1).

MSE is initiated to improve the quality of analysis of human rights impacts. The unique familiarity that local stakeholders have of the geographical space and local settings in which companies operate gives them the opportunity to provide insights that can strengthen the assessment of human rights, social and environmental impacts in ways that can be tracked and communicated to national and international regulators, investors (see Fikru et al., 2024), communities, and other interested parties. Similarly, constructive stakeholder engagement gives business entities the prospect of collectively prioritizing the impacts of business operations through collaborative engagement. This is important because companies must recognize their inability to solely identify and address the various impacts of their business on the communities in which they operate. MSE therefore ensures the organizations embrace robust voluntary and mandatory compliance mechanisms to fortify international best practices through collaborative monitoring and communication of human rights impacts. It is also important to stress that MSE equips the company to better understand how to manage issues that have been identified through impact assessment or a community consultative process. This will help to create co-ownership of solutions to address specific issues that are identified through stakeholder engagement. The UNGPs emphasize a risk-based due diligence approach

Table 16.1 Elements of MSE for engagement across distinct stages of a mining project

Elements	Stage One	Stage Two	Stage Three	Stage Four
1. Identification of priority issues of interest to stakeholders				
2. Stakeholder analysis and engagement plan				
3. Providing information to stakeholder and time to review it prior to consultation				
4. Appropriate forums and methods for the consultation process				
5. Transparency in decision-making through documentation, public disclosure, and feedback to stakeholders;				
6. Designing and implementing decisions				
7. Establishing appropriate baseline data, action plans and indicators				
8. Establishing a management system that incorporates stakeholders' engagement				
9. Grievance mechanisms				
10. Persistent stakeholder engagement				

Source: Adapted from Kvam (2019, p. 14).

to MSE that identifies and prevents the human rights impact of business enterprises on actual or potential victims (UN, 2018).

There are a couple of issues to be considered in MSE that broadly relate to engaging with the right stakeholders on the right issues, in the right way, and at the right time. For instance, in the DRC, the *Cahier de charge* stipulates 12 steps of MSE that are established, evaluated, and renewed every five years (DRC Mining Code, 2018, article 414). In the DRC, stakeholders include community representatives, the Minister of Mining, and the governor of a given province believed to be conversant with the geographical space. MSE requires engaging the right stakeholders by including not only stakeholders that have some influence over the company but also potentially affected stakeholders who may experience the negative impact of the company's operations. The other aspect of MSE is ensuring that the company is engaging stakeholders, such as local communities, on the correct issues. Conditions in the Congolese mining sector illustrate some of the challenges to meaningful engagement. While Congolese

government officials can influence the actions of mining companies to a degree, they have been accused of being corrupt or siding with companies. One respondent captured these accusations in the following manner:

While communities are impoverished, companies provide cash, property and educate children of government representatives (e.g., Ministers and Governors). When they are corrupted, they not only fail to support community engagement, they [also] harass communities. If it was not for having corrupt leaders, we would not have been displaced, having our wells and the environment polluted. To give [a contrasting] example, in Botswana, the government compels companies to abide with national laws and ensure that communities benefit. In [the DR] Congo, the government favours companies over people. They harvest billions when communities lack the basics of clean water, hospitals, roads, and schools.<sup>4</sup>

Consistent with the sentiments expressed by the above respondent, MSE should transcend CSR and philanthropy by ensuring that the company is clear about what it seeks to learn from the engagement process. Engagement in a proactive way entails determining the type of engagement that is suited to address a particular issue. This is an important facet in order to build trust between the company and affected stakeholders.<sup>5</sup> On the other hand, timely engagement with stakeholders is important for MSE which means being proactive by anticipating potential issues that may lead to distrust with stakeholders or unfavourable outcomes for the business. The other aspect of meaningful stakeholder engagement is that its primary focus is the interests and concerns of stakeholders.

Overall, due diligence is linked to effective and meaningful stakeholder engagement. In this sense, MSE seeks to benefit the people that may be directly affected by considering the negative impacts of a company's operations on their human rights, livelihoods, and their environmental, social, and economic well-being. A company can benefit from understanding the perspectives of those who may be affected by its operations. This also means that people/communities – their human rights, the environment, their social and economic well-being – must be the focus of the due diligence process and requires listening to their perspectives, experiences, and ideas and directly engaging them through different mechanisms to gain first-hand knowledge of the feelings and views of stakeholders.

### **Towards a New Conceptualization of MSE**

Although MSE exhibits much promise as a means of improving environmental impact assessment in Africa's extractive sectors, the goal should be deep, sustained, and holistic engagement that transcends the tokenism of the past. As Maher and Buhmann (2019) have argued, in terms of theory and practice, the meaningful stakeholder engagement approach highlighted by the UNGP and OECD is dominated by a top-down arrangement where the impact assessment processes are often designed and executed under the control of organizations and with little input from the stakeholders. Prentice et al. (2018) refer to such 'downstream' arrangements as managerialist. Meaningful stakeholder engagement calls for a bottom-up approach that takes into consideration the knowledge, experience, perspectives, cultures, and influence of stakeholders in the impact assessment of an organization. Maher and Buhmann (2019, p. 233) affirm that meaningful stakeholder engagement "offers opportunities for shifting assessment of adverse impacts from being top-down to bottom-up focus on communities'

perception". According to the authors, stakeholder engagement is meaningful when economic actors "engage in extensive consultations with affected stakeholders to understand about potential and actual impact or risks of impact, and the culturally appropriate ways to manage adverse impacts" (Maher & Buhmann, 2019, p. 8).

Evident from these frameworks and definitions of meaningful stakeholder engagement is a neo-liberal epistemic conceptualization that fails to accommodate the peculiar local contexts of stakeholders and account for their voices in the design and execution of the stakeholder engagement plan. The reference to meaningful stakeholder engagement is outlined based on the interest of institutional investors and in a way that privileges business interest over and above the impact on affected groups. Another shortcoming of these frameworks is that it reflects a top-to-bottom approach that takes power and influence away from the stakeholder and retains it in the hands of the organization. Stakeholder engagement should not merely satisfy the requirement of listening to the concerns of affected groups. Stakeholder engagement that is meaningful must be led by initiatives inspired by the affected groups and individuals. Some scholars have challenged existing global governance frameworks on meaningful stakeholder engagement as technocratic and apolitical intervention (Maher & Buhmann, 2019; Prentice et al., 2018).

Empowered stakeholder participation is constructive engagement that takes into account the perceptions and feelings of affected groups in an inclusive way. A bottom-up stakeholder engagement approach is meaningful when it has direct effects on the livelihood of the community rather than meeting the guidelines of global governance for responsible and ethical business practices. This is in line with Zoomers and Otsuki's (2017, p. 168) argument of inclusive development "as the process by which investment agendas come to be included in people's agendas to improve their livelihoods, rather than the current process by which people are included in business plans or consulted to facilitate the business operating on their land". MSE is therefore a response to the shortcoming of a top-to-bottom approach to the impact assessment of businesses in the community by placing emphasis on the community's ownership of the design and implementation of the engagement process.

### **Environmental and Social Impact Assessments within the UNGPs and AMV**

Informed by our agential constructivist lens, we contend that the quality of environmental and social impact assessments in Africa's natural resources sectors and the attendant sustainability level of such economic activities are products of prevailing co-constitutive and mutually-reinforcing regional and transnational norms on resource extraction. The United Nations Guiding Principles on Business and Human Rights (UNGPs) and Africa Mining Vision (AMV) are contemporary examples of simultaneously norm-producing and norm-produced governance instruments that influence the environmental and social impacts of business activities. Although the UNGPs are applied to business activities in all continental regions and the AMV to Africa, their constituent norms are both infused with 'liberal' norms that seek to promote economic objectives like foreign investment, productivity, and employment with concomitant societal objectives like respect for the environment and human rights. The traditional liberal norms that infuse regionness (Abe, 2022) can be displaced by illiberal norms of regionness (Grant, 2022) across Africa and beyond. The extent to which the UNGPs and AMV can attain – and balance – such objectives and public goods is subject to scholarly debate (Grant et al., 2022). Further, the UNGPs and AMV differ in terms of some of their norm-infused objectives (e.g., the latter seeking to promote greater local content/procurement

in mining sectors). The abovementioned considerations – and related issues – are examined in the two sub-sections below.

### **The UNGPs**

In 2011, the UN Human Rights Council endorsed the UNGPs in order to promote three goals necessary around human rights protection by firms: enhanced operational diligence and respect for human rights throughout the production process, better access to judicial and non-judicial support for victims of human rights violations, and protection of civilians by state and non-state actors against human rights abuses through rigorous laws and adjudication procedures. Consequently, many extractive industries count on the UNGPs' directions around governance, the implementation of human rights laws, and solutions in case of violations. Besides, the UNGPs are supported by "hard" laws (national and transnational legislation) and by "soft" laws (non-binding agreements) – including those signed during stakeholders' negotiations (Abbott & Snidal, 2000; Alorse, 2020). However, both national and transnational voluntary standards and agreements risk not being implemented by firms that are driven solely by profit. Thus, advocates for adherence to such regulations are demanding a transformation of global governance initiatives into binding international treaties and laws that protect and prevent human rights violations. Although this advocacy is a step in the right direction, it is fraught with limitations. Africa – which is the main macro-region where the UNGPs writ large need to be implemented owing to the size of its extractive industries and weak regulations – has agency in treaty negotiations of a calibre that remains meagre. This is troubling and stems from the fact that the continent is often relegated to the sidelines in international policymaking. Africa's participation is also limited by financial, capacity-related, and logistical obstacles.

The African Union (AU) and individual African states welcomed the UNGPs' opportunity for capacity building and collaboration with transnational firms and NGOs – though many states resorted to resource nationalism as well as perceived local and transnational NGOs advocating from environmental sustainability and human rights as 'enemies of the state' and its development projects. It appears that many African governments are not keen on MSE as they tend to side with firms at the expense of local stakeholders' interests. In other words, many governments not only fail to engage in MSE with firms, but also have a poor record of implementing the 31 foundational and operational principles of the UNGPs. While all 31 principles are crucial, they all hinge on the first ten principles which cover Pillar 1 (State's Duty to Protect) that addresses governments' responsibility to protect human rights and fundamental freedoms; namely:

- i. Protecting against human rights violations within a state's territory or jurisdiction by third parties including business. This implies taking necessary steps to "prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication."
- ii. Stipulating clearly the expectations/requirement for all businesses within their jurisdiction to respect human rights (and the environment) "throughout their operations."
- iii. Fulfilling the responsibility to protect people (and the environment) by enforcing laws that require firms to respect human rights and periodically assessing adherence to such laws; seriously reinforcing the laws and policies governing the "creation and ongoing operation of businesses"; providing contextualized guidance to businesses on how to

respect human rights (and the environment) throughout the lifespan of a project; and both encouraging and requiring business enterprises to communicate how they address and mitigate human rights violations (and environmental footprints) (United Nations 2011, pp. 3–4).

- iv. Protecting against human rights violations by state-owned or -controlled businesses.
- v. Diligently observing international human rights obligations.
- vi. Promoting respect for human rights with businesses with which states conduct businesses.
- vii. Paying special attention to respecting human rights in conflict-affected locations.
- viii. Ensuring that state institutions, agencies, and departments entrusted with shaping business practices fulfill national human rights laws and requirements.
- ix. Maintaining adequate national policy spaces in meeting human rights (and environmental sustainability).
- x. Ensuring that state institutions never relinquish their responsibility to protect human rights while drawing on the UNGPs to promote and advance international collaboration in managing businesses, human rights, and environmental protection challenges.

It must be stressed that governments have a responsibility for the successful implementation of Pillar 2 (Corporate Responsibility to Respect: Principles 11–24) and Pillar 3 (Access to Remedy: Principles 25–31) by providing due diligence guidance and raising awareness with businesses and investors on laws and regulations that prevent human rights abuses in business operations. Indeed, this is only possible through MSE, which fosters positive relationships and networks with all stakeholders. However, African states have a poor record of implementing the ten principles as well as respecting human rights and environmental sustainability in general. Weakness in implementing the UNGPs affirms the failure to deliver the political goods of “safety and security; rule of law and transparency; participation and respect for human rights; sustainable economic opportunity, human development” and environmental protection (Rotberg, 2013, p. 174). It also underscores the shortcoming in existing conceptualizations of actors in resource governance. A review of the UNGPs, for instance, clearly reveals the centring of states and businesses in its prescriptions and limited focus on the potential role of local stakeholders in guaranteeing their enforcement. It encourages environmental regulations – but decentres those individuals that are mostly impacted by environmental degradation in the discussion of appropriate stakeholder behaviours. Yet, local norm entrepreneurs can create incentives for businesses to act based on their influence with local communities. Thus, local stakeholders must engage with business enterprises rather than governments, although international and national power structures accord power to governments – and not the people. Perhaps MSE requires perceiving the African state as a colonial “burden and curse” (Davidson, 1993) and not as a stakeholder that serves citizens’ interests, and encourages local communities affected by business activities to engage with firms.

### **The AMV**

The AMV reproduces the aforementioned shortcomings of the UNGPs, but also compensates for the UNGPs’ restrictive conceptualization of the environment of business. In February 2009, for instance, the African Union Heads of State and Governments adopted the AMV as a paradigm shift from a resource development model that scholars have termed the ‘Dutch disease’ (Andrews et al., 2022b; Bassett & Fradella 2022; Ebrahim-Zadeh, 2003; Pegg, 2010; Taodzera, 2020) towards one where mineral resources (and other natural resources) are

harnessed towards multidimensional development needed to create diversified, competitive, and contextualized economies that respond to civilians' needs and interests. The 'Dutch disease' is particularly acute in natural resource sectors because of the potential of that particular resource to fetch high export prices, which in turn increases the currency exchange rate making other sectors (and their goods and services) more expensive. The latter sectors are therefore harmed – hence the calls for diversification and better linkages via local content and procurement, among other good governance practices, across cognate sectors. In December 2011, the AU's commitment to the AMV was illustrated by the creation of an Action Plan for two purposes: (a) to establish the African Mineral Development Centre mandated to implement the Action Plan; and (b) the AU's partnership with the United Nations Economic Commission for Africa (UNECA), the United Nations Development Program and the African Development Bank. In 2013, the AU ministers responsible for mineral resource governance created an AU commission to create an Africa-led, specific monitoring mechanism – the African Mineral Governance Framework – to govern and monitor the mineral sector.

At the national level, countries developed the Country Mining Visions (CMV) as liaisons with the AMV. The CMV focuses on nine priority issues or clusters:

Cluster 1: Mining revenues and mineral rents management

Cluster 2: Geological and mining information systems

Cluster 3: Building human and institutional capacities

Cluster 4: Artisanal and small-scale mining

Cluster 5: Mineral sector governance

Cluster 6: Research and development

Cluster 7: Environmental and social issues

Cluster 8: Linkages and diversification

Cluster 9: Mobilizing mining and infrastructure investment

While all these partnerships and clusters are important, other stakeholders, particularly communities affected by extractive practices, are excluded. Among the nine priority areas, local interests and needs, such as securitizing communities that are affected by business enterprises, environmental and human rights violations, are not reflected (Ackah-Baidoo, 2020; Grant et al., 2022). Moreover, considering the challenges of poor resource governance, weak institutions, and resource-based conflicts across the continent, the implementation of the AMV remains weak.

The AMV requires reinforcing MSE, managing resources and revenues in a transparent and accountable manner to ensure their contribution to sustainable peace, security, and well-being for not only the state but also local communities. Thus, a strong engagement with local actors to facilitate viable and sustainable economic linkages between the mining sector and other sectors of the national economy is crucial.

Beyond the limitations of soft laws and the limited agency of African states in international treaty negotiations, there is a broader obstacle to meaningful environmental and social impact assessment, which neither the UNGPs nor the AMV addresses. The demand for, and implementation of, impact assessments tend to privilege temporal and spatial proximity. In other words, even when social and environmental impacts are assessed, the interests and voices of the known and existing actors within the immediate environment of a project are centred – while those of unknown and distant actors are rarely considered. This tendency is consistent with, and perhaps stems from, the myopic conceptualization of sustainability as pertaining to

the 'here' and 'now' or 'close' and 'known'). A truly sustainable approach to environmental and social impact assessment, as conceptualized by Potvin and Richards (2015) and Thiele (2016), would include current populations in determining the scope of the investigation – rather than simply providing answers to predetermined questions. It will also involve distant populations, who, despite being non-residents of mining areas, are potentially susceptible to the environmental and social effects of mineral extraction in the mining areas. Such a sustainability strategy will ensure that changes in the environmental and social conditions of mining areas do not upend broader social (and economic) relations that could ultimately undermine extractive activities in mining areas. Additionally, a holistic sustainability lens would consider the immediate needs of mining communities (Andrews, 2019; Djomo et al., 2018; Hilson, 2022; Katz-Lavigne, 2022), even as it estimates the potential impact of mining on future generations based on the experiences of contemporary populations.

This restrictive concept of sustainability is, to varying degrees, also evident in a growing number of National Action Plans on Business and Human Rights, which aim to localize the UNGPs in Africa (see, for example, Uganda, 2023; Kenya, 2023). Although these localized instruments could facilitate context sensitive stakeholder engagement, they are not only elite-driven in that the consultation agenda is determined by transnational and national actors, but also fixated on contemporary populations. In both Uganda and Kenya, for example, the NAPs envisage local participation in consultations, but are unclear on the degree of involvement and at which phase of the process it should occur. This is problematic in that ambiguity around community involvement in stakeholder engagement indicates, and incentivizes, elite dominance.

### **Obstacles to Meaningful Stakeholder Engagement**

The extant minimalist engagement practices of corporations – coupled with the constitutive stakeholder consultation regimes – produce obstacles to MSE. One such obstacle is that corporations lack an organizational culture of transparency, which stems from the origins of corporate entities (Graham et al., 2022; Tedla, 2016). As part of their need to locate untapped markets, inputs such as natural resources, designs, techniques, services, and technologies, and other means to promote comparative advantage and profits, corporations are often secretive about their internal decision-making and strategies. Hence, the default position for many companies is to deem such considerations to be confidential, proprietary, or commercially sensitive – and therefore not to be shared with external actors unless legally compelled to do so. If a lack of transparency is a predominant norm within the wider organizational culture, it is no surprise that national mining regulations and the stakeholder consultation regimes that inspired them tend to leave environmental and social impact assessments, including the reporting of their findings, to the discretion of mining companies. This discretionary element itself is a norm that although becoming increasingly out of fashion, impedes the influence of competing norms such as transparency. Even when assessment results are disclosed, they tend to be vague, thereby creating suspicion within local communities. Partly due to the lack of transparency of businesses and the attendant legacy of historical deprivations, mining communities are often mistrustful of corporations – even when the latter are being transparent. This situation impairs the quality of MSE because it limits the openness of communities to assessors and contributes to perceptions that corporations have ulterior motives – ultimately resulting in discouraging local communities from engagement in general. In fact, the lack of transparency engenders a cycle of 'meaningless' engagement because the resultant mistrust



undermines meaningful engagement, while the lack of meaningful engagement with stakeholders then pulls them farther apart.

Likewise, the ascription of homogeneity to non-state actors masks the myriad differences (and potential divisions) in local communities – along ethnic, language, gender, age (youth-elders), permanent-transient resident, and other identity-group lines – which shape their interactions with mining companies. Due to their sociocultural differences, local groups are likely to have disparate experiences of the same mining activity or offer divergent views on the potential impact of planned projects. Therefore, failing to include all the segments of mining communities, which is not uncommon due to their homogenization by states and companies, destabilizes company–community relations and potentially exacerbates identity group divisions. This situation tends to metastasize into conflict, which, whether resulting from mining-related disputes or other tensions, constitutes another obstacle to meaningful MSE.

Further, extraction activities often progress even when violence breaks out in mining communities and after people have been displaced. This leads some commentators to describe mining conditions in countries such as the DRC as ‘militarized’. Yet, meaningful stakeholder engagement must continue since displaced people may return to those areas after an episode of violence ends. Unfortunately, however, stakeholder consultation regimes and national mining regulations do not advance a sustainable protocol for engagement in these circumstances. While the above discussion is not an exhaustive enumeration of the obstacles to MSE, it nevertheless acquaints actors from businesses, states, civil society, scholars, observers, and all other stakeholders with some of the vital issues that need to be considered and addressed in order to make stakeholder engagement meaningful.

### **Concluding Remarks**

Our analyses have sought to illustrate how MSE may be employed as a strategy for reinforcing sustainability, the SDGs, and adherence to national, regional, and transnational standards in mining sectors. Local reactions of affected communities benefit from demanding adherence to existing regulations without having to ‘reinvent the wheel’. The MSE process must understand the motivation of the actors and how they are positioning themselves in relation to community’s interests and the environment, governance, and sustainability issues to avoid paying ‘lip service’ and complying with national, regional, and transnational standards. It is also important that local stakeholders monitor and demand accountability for the money involved in implementing a project and how it is being exchanged. Considering that transnational actors have a slew of international lawyers, MSE requires communities to have access to such lawyers and transnational organizations with the capacity to disseminate information about business actors’ violations to consumers – who often have more power than the people at the grassroots level in Africa. For example, somewhat ironically, consumer entities within the supply chain of electric vehicles (EVs) have more power to place pressure on EV industries to implement positive change than the communities where the minerals and metals for producing EVs are sourced. The reason why stems from the nature of capitalist economic systems. Retailers often respond to what they perceive to be what their customers want to purchase – and then the former leverages their economic clout on suppliers (buyers and producers) within the supply chain of a given manufactured or processed product. If suppliers do not comply with the larger retailers’ preferences, then the latter may choose to do business with competitors of the former. Put differently, retailers have a significant degree of clout since components of EVs are sourced by myriad supplier companies throughout the supply

chain. Increasingly, retailers are leveraging this influence across a growing number of sectors by asking suppliers both upstream and downstream to conduct human rights due diligence (HRDD) to prohibit child labour, slavery, unsafe working conditions, conflict-prone minerals, and environmental pollution from being part of the components they buy and sell as part of supply-chains.<sup>6</sup> MSE would also require exchanges on the ethical standards to be followed throughout a project's life span. Businesses must position themselves as owing something to communities and not as their bosses, as beneficiaries rather than exploiters, and as actors who are genuinely interested in reinforcing CSR, human rights, and environmental sustainability rather than plunderers.<sup>7</sup> This interplay is consistent with agential constructivism, for it places importance on the agency of local community actors as they interact with corporate actors as part of MSE. There might be an international organizational culture that prioritizes state-led and corporate-led engagement processes, but this removes the agency that communities demand for effective governance structures. If there is such a thing as a 'MSE culture', then distant local community populations are recognized as more than victims who are susceptible to the environmental and social effects of mineral extraction, but rather as agents who should be included in MSE initiatives.

In former colonies, MSE must also acknowledge the legacies of colonialism, including the decades of neo-colonial violent competition for resources, corruption, militarism, and criminality by national, regional, and transnational actors. As Southall and Comminos (2009, p. 363) note, "The emergent bourgeoisie, managerial rather than capitalist ... pursuing rent rather than profit, so the key intercontinental relationships were not just those of aid and trade, but even more between multinational corporations and politicians and bureaucrats." Insights from the Congolese mining sector are particularly prescient when reflecting on the challenges that MSE faces. Power asymmetries between companies and local communities, communication difficulties in terms of language (e.g., English, French, Mandarin, and local languages), and legacies of corruption in the DRC are some of the primary challenges for veritable MSE – not to mention that sometimes key local community representatives including chiefs can be corrupted<sup>8</sup> by powerful national, regional, and global actors. Furthermore, special attention must be given to women and youth because they are often excluded from consultation and decision-making, despite being the most impacted by business projects, environmental destruction, and human rights violations. For example, in the DRC and other African mining communities, women depend on the environment for firewood, charcoal, and clean water. Any form of environmental destruction threatens their lives and that of their families. More specific wording concerning vulnerable groups in the pillars, sections, and texts of the UNGPs and AMV – rather than 'reading in' or inferring that they should be consulted – is needed. For example, the following wording could be included if the AMV is revised in the coming years: consulting and engaging women and youth in decision-making responds to the AMV concerns around "asymmetric power relations" (African Union, 2009, p. 11). Without such changes, the status quo will remain, wherein government and mining companies' views are prioritized without considering the perspectives and interests of the local communities that are affected by corporate practices.

COVID-19 and the consequent global financial crisis have also posed challenges to MSE. It is crucial that MSE assesses the impact of the COVID-19 pandemic on communities throughout the lifespan of a mining project.<sup>9</sup> Moreover, MSE requires both businesses and affected communities to consult with independent experts on human rights and the environment to conceptualize the actual and potential environmental and human rights threats and impacts a project poses. Such consultation must consider the context or location, size,

duration, short-term, medium-term, and long-term impacts of the project – especially on vulnerable or marginalized individuals within groups. For example, human rights and environment violations affect men, women, youth, and children (living and unborn) differently. Projects conducted close to human habitats, national parks, and those involving the destruction of forests, flora, fauna, and other ecological systems require serious and long-term consultation and assessment. And since human rights situations and environmental issues are dynamic, consultation and assessment must occur at regular intervals throughout the project's lifecycle. Given that trust among actors in MSE relationships is vital, the above considerations should not be ignored. Otherwise, the 'performance gap' will persist.

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### **Notes**

- 1 Our focus, which echoes the vast majority of literature on non-state actors in mining sector governance, is on collective entities such as groups, regardless of their status as either formal or informal. That said, we acknowledge the importance of individuals as stakeholders – those who reside near mining areas but could also move among mining areas as economic migrants as well as interested individuals who are concerned with environmental, social, or human security issues in mining despite residing relatively far from the actual extractive activities.
- 2 See, for example, Compaoré (2018), Grant (2018b), and Compaoré et al. (2022).
- 3 Per interviewee numbers 3, 7, 23, 28, and 30, Lubumbashi, DRC, December 2022.
- 4 Interviewee number 23, Lubumbashi, DRC, 3 June 2023.
- 5 The issue of trust often arises in MSE initiatives. Engaging and including security providers, whether public or private, is an oft-overlooked aspect of building trust among stakeholders in MSE efforts. The importance of inclusiveness in building trust among a wide variety of stakeholders was discussed by several Voluntary Principles on Security and Human Rights (VPSHR) panel members. VPSHR Plenary, London, United Kingdom, 25 May 2023.
- 6 This trend was echoed by Voluntary Principles on Security and Human Rights (VPSHR) panel members offering reflections on some of the positive impacts of MSE initiatives on commercial consumers that link global, regional, national, and local dynamics in the context of human rights due diligence (HRDD). VPSHR Plenary, London, United Kingdom, on 25 May 2023. It was also discussed as part of several UNGP panels during the 2023 annual plenary meetings. UNGPs Plenary, Geneva, Switzerland, 27 to 29 November 2023.
- 7 Mining firms of all sizes – including those in other extractive sectors ranging from oil and gas to forestry – can benefit from adopting detailed advice on how to engage local communities and build trust in MSHE relationships by implementing the strategies and insights of 'tool kits'. A leading resource of relevance is the "Working with Communities" chapter in the *Addressing Security and Human Rights Challenges in Complex Environments* tool kit – which benefitted from the collaboration of civil society, academia, and industry – and is available for free at <https://securityhumanrightshub.org/toolkit/>.
- 8 Interviewee number 20, Lubumbashi, DRC, December 2022. See also CEPAS (2007).

- 9 For several case studies of the implications of the COVID-19 pandemic's impact on Africa's mining sector, see for example the contributors to Andrews et al. (2022a).

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# MEANINGFUL COMMUNITY ENGAGEMENT IN THE MINING INDUSTRY

## The Alcoa Case in the Brazilian Amazon

*Fabio Abdala and João Paulo Veiga*

### Introduction

In this practice note, which is based on the authors' experience in the field and academic reflections, we examine the process of engagement and agreement between Alcoa World Alumina Brazil (Alcoa), the Association of Communities of the Juruti Velho Region (Acorjuve), and the Brazilian authorities regarding the installation and operation of the Juruti bauxite mine, located on Juruti Velho traditional community land, in the Brazilian Amazon municipality of Juruti.

As defined by the Brazilian “National Policy for the Sustainable Development of Traditional Peoples and Communities” (enacted by Decree 6040/2007), “Traditional Peoples and Communities” are culturally different groups that recognize themselves as such, have their own forms of social organization, and occupy a territory and use its natural resources as a condition of their cultural, social, religious, heritage, and economic reproduction, using knowledge, innovation, and practices generated and inherited by tradition.

The traditional people category is connected to land tenure and certain production methods (Castro, 1997). Their survival is connected to the nature that surrounds them and from which they subsist, and their environment is the result of a landscape created, changed, and recognized by these people (Vianna, 2008). This built landscape is intricately linked to their way of life, productive activities, and group representation, both in practical terms, by providing resources for the group's subsistence, and symbolically, by providing the meanings that allow them to experience this environment. For this reason, impacts on nature also mean impacts on these people and vice versa (Castro, 1997). These groups include Indigenous People and other culturally different communities, such as the Ribeirinhos or agro-extractivist communities (traditional riverine settlers), for whom cultural and economic activities are closely linked to their land, for instance, in agro-extractivist settlements (known in Brazil by the acronym PAE—Projeto de Assentamento Agroextrativista).

Brazil's National Institute for Colonization and Agrarian Reform (Incra) created the Juruti Velho Agroextractivist Settlement (PAE-JV) in 2005, transferring tenure of the land

plots to the region's traditional communities, although without granting land titles at that time. The Juruti mine would later be implemented inside the PAE-JV settlement.

This fact led the mining company to follow the United Nations Guiding Principles' recommendation to respect human rights and to provide remediation mechanisms aiming to align the operation with international standards. The Juruti Mine case study contrasts with the Brazilian history of natural resource exploitation of Indigenous and traditional community lands since colonial times, which created wealth for a few, while fueling violence, displacement, and poverty for most.

After a period of conflict and positional defensive political claims from both sides, in 2009 a negotiation process between the company and the community mediated by authorities on land use sharing for mining and community was established, resulting in benefits and compensations for all Parties.

To examine the case, we use the multidisciplinary concept of meaningful stakeholder engagement (MSE) to highlight the impacts of large projects on the most vulnerable traditional communities, including rights-holders. The affected communities are the rural households of Juruti Velho, represented by Acorjuve. They, have strong intergenerational land connections and land title claims overlapping the Alcoa mining concession. This practice note explains how the supposedly weaker and more vulnerable stakeholders in the negotiation with the corporation have been successful in mitigating damaging impacts and bargaining for compensations in a larger coalition (local government, Catholic Church, prosecutors) through collaborative governance and multilayered dialogue within a dense formal and informal institutional setting. This process resulted in the granting of tenured land titles and mining income rights (royalties) to the communities, and the obtaining of a social license to operate for the company. This multisectoral dialogue and agreement experience points to a reconciliation of mining and traditional community rights in the Amazon.

Even though an MSE process has been applied to the Juruti case, one question remains: does this process ensure long-term conditions to prepare municipalities and communities for the eventuality of having to find new economic means to subsist and develop sustainably, safeguarding the ways of life and work practices for traditional communities and future generations? We assume that MSE is a necessary condition to respect human rights but might not be enough to guarantee that mining income and other benefits will ensure the sustainable development of the Juruti municipality in the long run.

### **Overview of Impacts, Conflict, and Cooperation**

The case of Juruti has aroused the interest of companies and the scientific community around the world regarding how sustainable the development model was that was adopted in this mining case (FGVCes, 2008), considering the perceived incompatible goals and conflicts between companies and communities in the Amazon. On the one hand, democratic participation and stakeholder engagement (Bartolini, 2010; Borba, 2012), effective public-private governance (Abdala, 2011) implemented through local institutional arrangements (Donadelli et al., 2016), the coordination of federal and state authorities with social movements, and the adaptation of the company to the local political cycle suggest that the model can point towards sustainable development and thus break up the boom-bust cycle of mining.

A bottom-up movement of autochthonous local emancipation is expected to empower traditional communities with control of the territory and mining compensation and benefits



to lead to sustainable development (Miranda, 2019). Theoretical approaches based on concepts of justice and fairness pointed out that external actors, such as regional and federal public authorities, have the potential to maximize fairness by improving local communities' capabilities, especially in terms of information and power negotiation (Gavidia & Kemp, 2017).

On the other hand, this development model may not be sustainable, because it can generate more deforestation and poverty than wealth for the inhabitants due to the land occupation promoted by migrant families from neighboring municipalities, which would increase social and regional inequality due to effects on municipalities that do not have such large-scale mining projects in their territories (Silva & Silva, 2016). This uncoordinated migration process would continuously increase the demand for public services, thus also increasing inequalities and the pressure on local authorities. The solution would be to increase public spending and attract more private investment in innovative enterprises, which ultimately depends on decision-making at the national level. This, in turn, means that local sustainable development depends on incentives for endogenous regional development coming from the government and the private value chain.

The (de)territorialization of communities promoted by mining companies (Lopes, 2012) and the power of multinational corporations are also viewed as a modern form of colonialism and environmental injustice (Schroering, 2008). Both views and interpretations are present in the literature review conducted regarding the Juruti case study.

In the Juruti case, the process of obtaining the installation license (a type of Brazilian permit that allows mining enterprises to advance to the construction phase of project development) was marked by opposition and conflicts. Following the presentation of the Environmental Impact Assessment (EIA) Report by the company, the Federal and State Prosecutor's Offices issued a formal request for annulment of the licenses issued by the Environmental Agency, alleging superficiality, inconsistency, and a lack of transparency in the environmental studies (Fiocruz, 2020; Wanderley, 2008). The State Prosecutor highlighted that the licenses were issued "without having all impacts and externalities identified, described and considered in the licensing process and, therefore, allowing no possibility for compensation/indemnification" (Moraes, 2021, p. 37).

In terms of social effects, the Juruti Velho communities and their leaders, the traditional settlers of the land where the company would be installed, publicly expressed their opposition to the proposed mining activities, alleging a lack of dialogue and transparency, the immediate impacts that had already resulted from the company's arrival without due diligence and care, and the absence of traditional communities' participation in the impact and reparation studies and plans (Canto et al., 2015).

In January 2009, under the leadership of Acorjuve, more than 1500 people blocked the railway, port, and highway areas under construction and occupied the company's operation base entrance. This group demanded more attention to socioenvironmental impacts on the community's land and a more consistent dialogue regarding their interests. They presented a series of claims for local development in return for their consent to the company's setup and operation, including land titling for communities and financial compensation payment for the use of traditional land. This demonstration was the high point of the communities' confrontation with mining interests, a crisis that mobilized against the police forces, federal, state and municipal authorities, the company's attorneys and CEO, and had major repercussions (Borges & Branford, 2020; Fiocruz, 2020).

Pressures from the Prosecutor's Office and the crisis caused by the community resulted in negotiations aimed at finding a solution for land use conflicts and determining relevant reparations involving Acorjuve, Alcoa, the Federal Land Authority (Incra), and the Federal and State Prosecutor's Offices (MMPA and MPF). As a result, in mid-2009, the parties formally recognized the communities' ancient land tenure and traditional status, with Incra granting collective land title and rights to mining royalties to the communities. One could argue that Alcoa was given a 'social license to operate,' followed by a formal operation license issued by the State Environment Agency, which had so far been blocked by the Prosecutor's Offices and community opposition.

In September 2009, the company commenced its bauxite mining operations. That was the starting point of a long journey toward conflict mediation, consent building, and agreement among the parties. Regarding this process, it is worth noting that land tenure, recognized by the legal authority (Incra), was a major historic achievement for the traditional communities. According to the Observatory of Mining Conflicts in Brazil, land disputes between companies and communities are the most recurrent type of conflict, accounting for 212 cases out of a total of 851 occurrences (24.9%) (Fiocruz, 2020). The fact that the communities, the authorities, and the mining company have settled the conflicts around land disputes is a remarkable milestone in the history of Brazilian mining projects.

Ten years after the outbreak of this conflict and the communities' occupation, and because of successive dialogue rounds and negotiations, in 2018 a "Term of Commitments" was signed by the communities, represented by Acorjuve, with Alcoa, the Federal Land Authority (Incra), and the Federal and State Prosecutor's Offices, referred to here as "Parties". It consolidates the agreement between the company, communities, and governmental authorities for the shared use of land by the Ribeirinhos and mining activities. This transformation from conflict to multistakeholder cooperation is associated with the meaningful engagement process between the Parties.

### **Consultation and Agreement with Communities, Externalities Assessment, and Financial Compensation**

Based on its awareness of legal and traditional rights, the aforementioned communities' association (Acorjuve) demanded a special consultation process involving all 56 communities of the Juruti Velho Region, as well as compensation for the communities' consent to mining installation. Indemnity for lost profit due to land use, as well as for damages caused by mining activities to landowners and those who traditionally occupy the land, is assured by Brazilian legislation. Referring to this specific mineral exploitation inside traditional land, the communities claimed that valuation for reparation must go beyond the law and environmental license measures (mitigation and compensation).

Mediated by Incra and supported by the Federal and State Prosecutor's Offices, Alcoa and Acorjuve started a complex negotiation process on environmental losses and damages valuation to define compensation for the communities. How businesses understand their impact and dependence on the capitals (natural, social, human, and produced) that are the basis of human well-being and economic success is a new subject that has been advocated by experts (Capitals Coalition, 2023). In the case of Juruti, the Ecoideia consulting office was hired to conduct a study, which applied ecological economics assumptions and methods, assessing environmental, social, and cultural damages to all Juruti Velho communities.

The Federal and State Prosecutors presented a summary of the Losses and Damages Study in the document “Guidelines for valuing environmental damage,” issued by Brazil’s National Council of the Public Prosecutor’s Office (Moraes, 2021). They highlight this case as a conflict that became a cooperation story due to the multistakeholder governance that developed, which created the conditions for the implementation of existing norms and their effectiveness by issuing specific rules for the decision-making process and scoping. This allowed the completion of the study with the widest participation of the stakeholders and with the greatest scope of inserting reality into the results (Moraes, 2021).

The assessment, quantification, and valuation assessment for determining economic, social, cultural, and environmental losses and damages indemnity in the PAE Juruti Velho (from now on LDA) began in 2010. The process was challenged by reaching a proper understanding between the parties, which, despite the signed agreement, still had divergent views on almost all issues of the common agenda. A transdisciplinary technical approach was required, with transparency and meaningful involvement between the Parties, to gradually build trust and consent.

This assignment involved a multidisciplinary team (e.g., biologists, agronomists, forestry engineers, anthropologists, geologists). The LDA methodology identified different amounts of money using a variety of methods to assess losses and damages in the territory. This included: i) income that no longer would be earned by the communities due to the mining enterprise; ii) indemnity for losses and damages caused by mining and exploration work; iii) previous indemnity referring to land occupied by mining and losses and damages resulting from this occupation for mining easement (Moraes, 2021).

This methodology was to consider traditional communities’ peculiarities, which depend on environmental and territorial integrality to survive and preserve their culture and way of life. In addition, it would integrate an analysis of losses and damages for every community throughout all of the project’s phases (exploration, implementation, mining, closure, and recovery of the degraded area) and for every area occupied and disturbed by the venture, including complementary and cumulative impacts and synergistic effects. Valuation was to cover both negative and positive variations that mining ventures caused to the value of all involved goods (Please see Table 17.1).

Externalities were organized into four groups of assets covering losses and damages: ecological and production systems, and cultural and social aspects. A specific valuation method was applied for each group (Abdala et al., 2014).

For all externalities and their associated effects, two main calculation bases were adopted, namely the Current Damage Value and the Potential Future Damage Value, and occasionally other valuation approaches, such as the “option value” and the “direct use value,” or others not specified.

Contingent valuation (CVM) was the main valuation method adopted, seeking to directly measure variation in the well-being of individuals resulting from a quantitative or qualitative variation in environmental assets (Table 17.1). To do so, it identifies how much individuals would be willing to pay to obtain an improvement in well-being. Attention should be paid to potential biases that could undermine the usefulness of a contingent valuation survey. In particular, the strategic bias, where the respondent wants a specific outcome, can deliberately either mis- or over-represent their preferences to influence the decision-making process with respect to the indemnity that would be paid.

The study’s degree of complexity in terms of the traditional communities’ human rights reparation required an intense interaction with the affected communities. Specific measures

Table 17.1 Valuation methods applied to negative externalities

<i>Externality and Associated Effect</i>	<i>Resource or Value Factor</i>	<i>Calculation Method</i>
<b>Timber &amp; Non-Timber Forest Products</b> – loss, restriction, or diminished access to the resource, diminished stock, lost income and business, and lost business opportunity	<ul style="list-style-type: none"> <li>• Wood</li> <li>• Extractive products (medicinal plants, fibers, oils, resins, fruits, flowers, and roots)</li> </ul>	Production or sacrificed use; opportunity cost; net income
<b>Fishing and Hunting</b> – difficult access, increased effort to access, decreased productivity, and decreased income	<ul style="list-style-type: none"> <li>• Fishing</li> <li>• Hunting</li> </ul>	Production or sacrificed use; increased effort
<b>Forest Easement</b> – unavailability for use or conservation of environmental assets	Opportunity to use or conserve environmental assets	Undefined
<b>Access Restriction</b> – loss of equipment or community improvement and change in way of life	Traditional community trails and paths (cultural/ manufactured capital)	
<b>Water Availability and Aquifer Recharge</b> – decrease in availability and change in the form of access; change in ecosystem functionality, change in environmental service, and loss of business opportunity	Water (consumption) and ecosystem function	Production or sacrificed use; increased effort
<b>Vegetation Cover (CO<sub>2</sub>)</b> – decrease in stock; change in environmental service, and loss of business opportunity	Forest carbon	Opportunity cost
<b>Bioprospecting Potential and Benefit Sharing</b> – change in ecosystem structure, environmental services, and loss of business opportunity	Ecosystem structure and function	
<b>Flow and Behavior of Animals</b> – alteration of ecosystem functionality, community behavioral adaptation, loss of related assets (livestock, improvements, swiddens, and loss prevention investments)	Natural capital – ecosystem function	Replacement cost, sacrificed production, prevention cost
<b>Light Pollution (nightscape)</b> – landscape change, ecosystem functionality changes, and social behavior changes	Natural landscape	MVC (combined with other pollution – air and noise)
<b>Soil Restructuring</b> – alteration of ecosystem structure and alteration of productive capacity	ecosystem structure and function	recovery or replacement cost
<b>Access to Pure Water</b> – alteration of ecosystem structure, alteration of possibility of access, and alteration of community behavior.	pure water (streams and springs)	Prevention cost or reversal, recovery, or replacement cost.

*Contingent Valuation Method for Externalities*

<i>Externality and Associated Effect</i>	<i>Resource or Value Factor</i>
<b>Daytime Landscape</b> – change in landscape quality, change in well-being, change in community behavior, and decrease in the value of areas	Natural landscape

(Continued)

Table 17.1 (Continued)

<i>Externality and Associated Effect</i>	<i>Resource or Value Factor</i>
<b>Noise Pollution &amp; Air Pollution</b> – change in landscape quality, change in well-being (including non-humans), change in community behavior, and decrease in land value	Natural landscape – sound profile, air quality
<b>Geotechnical Alteration</b> – alteration of geotechnical stability, increase in the probability of accidents, decrease in the value of areas, and alteration of community social behavior	Structure of the physical environment
<b>Social Aspects (combined):</b> Relationships of trust; feelings of discrimination and insecurity – change in social and community stability, increase in community and intercommunity breakdown, transformation of community interactions, and change in well-being, change in social dynamics and community behavior	Cohesion, human capital, and social capital (community structure and stability; self-esteem; symbolic references; quality of life; security)
<b>Cost of Living</b> – change in social, family, and economic stability; decrease in purchasing capacity, change in community behavior, and change in well-being.	Life support stability (structure of local economy)
<b>Employment and Income Frustration</b> – change in family and community stability, decrease in productive capacity, change in community behavior, and change in well-being.	Life support stability (workplace and production system)
<b>Accident Prevention</b> – change in social stability, change in social dynamics, changes in community behavior, and change in well-being.	Stability and quality of life (security)
<b>Cultural (combined):</b> Traditional Practices; Community Identity; Ancestral Values; Family Ties and Religious Values – changing productive practices, changing production and consumption habits, changing the teaching and learning system, weakening and forgetting traditional practices. Alterations: in social relations and the community paradigm, in the constitution of territoriality and endogenous/exogenous balance, in the transmission of traditional knowledge, forgetting or extinction of traditional knowledge, and reduced capacity for social resilience. Alteration of family, interfamily, and community stability, belief, and appreciation of the natural environment, of the way of life, and traditional activities (people–nature connection).	Production practices and traditional mode of (re) production. Symbols, values, knowledge, and memory references: territoriality. Traditional family structure. Practices and knowledge related to nature and healing; cosmology and local spirituality.

Source: Adapted from Moraes (2021).

were adopted, such as the adaptation of technical language for better understanding by the community, regular updating of information on the study's progress and outcomes, and continuous dialogue between community residents and the Parties on study-related issues.

One of the teams, comprised of social scientists and local assistants, lived in the region and promoted a series of participatory activities, such as collective meetings, family meetings, interviews, research, surveys, joint efforts, assemblies, workshops, parties, lunches, trips, inspections, and other informative and participatory activities involving thousands of residents in many locations. The language and resources applied were proper to local culture, using spoken maps, music, photos, movies, inquiries, radio programs, and reports on many aspects of the Juruti Velho social life.

The Juruti Velho communities were highly mobilized, developed their associative network, and reflected and voiced their opinions on who they are and what they do and want. Community participation provided in this process, and the information and knowledge base resulting from it, created a social innovation capable of making a mining multinational venture feasible in a traditional and remote land, in a complex and threatened environment.

In technical terms, the assessment, reports, and surveys generated an important knowledge base about the Juruti Velho, one which arguably unique in the region. It involved a census, which was much more detailed than the official one, a complex database of all natural resources, and social, economic, and cultural practices of the region organized in thirty-seven valued externalities. Due to this process, the Juruti Velho community probably knows more about themselves than most other Amazon traditional communities.

As a result, after four years of engagement between the involved parties, with significant community participation, 37 valued externalities (29 negative and 8 positive) were defined, covering several subjects, from timber/non-timber products and bioprospection potential to daylight landscape, telecommunications, ancient values, and other externalities, as shown in Table 17.2.

Finally, the valuation study for losses and damages in the PAE Juruti Velho resulted in an amount of USD 5.3 million (USD 6.1 million if corrected to December 2022) for the first five-year period, including the mining setup and start of operation. The next five-year cycles (2011–2025) are under evaluation.

As financial compensation, added to this are the mining royalties. Since the beginning of the mine operation in October 2009, Alcoa has paid USD 27.2 million in royalties to Acorjuve, the Juruti Velho communities' representative (Alcoa, 2022).

### **Economic Instrument's Rise and Fall**

Alongside land tenure, which constitutes a historic demand by traditional communities in Brazil, the money paid to the Juruti Velho communities may be considered one of the main outcomes of their struggles for reparation. Among the challenges faced by the traditional population dealing with major projects and their transformations and impacts, economic management is particularly important. Mining revenue, which is based on non-renewable resources, is as limited as the temporary use of the land, so its income tends to follow a “boom–bust” curve. In other words, there is an income increase at the beginning of and throughout the mining operation, followed by immediate termination after mine closure.

Therefore, two factors related to income are strategic for the quality of the development: 1) the use of mineral revenues (compensations and royalties) for human, social, environmental, and economic development; and 2) the savings for long-term investment and intergenerational

Table 17.2 Externalities matrix for losses and damages' valuation

<i>NEGATIVE externalities</i>			
<i>I. Production</i>	<i>II. Ecological</i>	<i>III. Social</i>	<i>IV. Cultural</i>
1. Wooden products	7. Water availability	19. Trust relationship	25. Traditional practices
2. Non-timber products	8. Vegetal cover (CO <sub>2</sub> )	20. Feeling of discrimination	26. Community identity
3. Fishing	9. Animal behavior and flow	21. Feeling of insecurity	27. Ancient values
4. Hunting	10. Nighttime landscape	22. Lifestyle cost	28. Family bonds
5. Forestry easement	11. Groundwater recharge	23. Employment and income frustration	29. Religious values
6. Access protection (areas)	12. Bioprospecting potential and benefit sharing	24. Accident prevention	
	13. Restructuring of soils		
	14. Access to clean water		
	15. Daytime landscape		
	16. Noise pollution		
	17. Air pollution		
	18. Geotechnical modification		
<i>POSITIVE externalities</i>			
<i>I. Production</i>	<i>II. Ecological</i>	<i>III. Social</i>	<i>IV. Cultural</i>
1. Opportunity for income generation	4. Absorption and reapplication of productive techniques (new)	5. Contribution to public space development	
2. Business and market with traditionality		6. Telecommunications	
3. Labor and services qualification		7. Mobility	
		8. Information base (availability and use)	

Source: Adapted from Abdala et al. (2014).

transmission, reducing future bust risks. Experts recommend that both should be managed through an economic instrument, such as a fund or foundation (FGV, 2008; Pinto et al., 2018).

Acorjuve is an association of members from a traditional community located in a remote area in the Amazon, with a subsistence economy and low-income activities. Because of mining compensation, this association turned into a very wealthy organization overnight, with no management preparation or specific training on economic instruments to deal with its new financial situation, even though its representativeness and standing were strengthened with the communities due to the resistance against mining and to the subsequent multistakeholder agreement.

As reported, in 2010 Acorjuve started to earn a few million dollars per year and faced a new and challenging situation related to the management of financial resources from mining. At the beginning of the engagement process, the Association declined a proposal to use the newly created Sustainable Juruti Fund, managed by the company in partnership with the local government and non-profit organizations, following guidelines proposed by experts (Diniz & Mello, 2022). The Association then created its own management model called the "native model for royalties distribution," the main objective of which was to distribute money

among the PAE residents and the Association itself. It defined a set of criteria to guide resource allocation to social wellness, life quality improvement, and sustainable development, among other purposes (Acorjuve, 2010; Demeda, 2020).

Acorjuve has been fighting for the maintenance of its “native model” to foster political connections between the Association representatives and the families living in the PAE to distribute money and goods among its members; it is also a manifestation of aversion to the bureaucratic and formal-legal logics always present in the arrangements for managing tangible resources. This “native approach” seems to be a political instrument that highlights Acorjuve’s struggle to guarantee or reinforce the legitimacy of its political self-representation. The native model should not be seen as a way of weakening the bonds that support social relations, the sense of collectivity, and participation; according to Demeda this model is an expression of the movement of the most fundamental social institutions, “operating to strengthen a certain cultural logic and to resist the logic of capital, which is increasingly embedded in the communities” (Demeda, 2020).

But Demeda has also described the native model’s dilemmas, conflicts, break ups, and political rearrangements motivated by the money distribution to the communities and the grievances around the adopted model, which resulted in breaking historical partnerships such as those with the Congregation of the Maristela Sisters (Catholic Church) and the State Prosecutor’s Office, due to allegations of poor management and goal deviation in money allocation. There is no public information on money management by the Association, which indicates that this is a matter of private community resources and that the Association’s accounting takes place during associates’ assemblies using internal means, without clearly specifying which accounting instruments were used.

After a few years of operation, suspicions were raised about the so-called native model’s management and governance. There is still little public information on projects that have been funded by the royalties paid so far. In this context, in 2015, the Federal and State Prosecutor’s Offices issued a Joint Recommendation that a community foundation should be created to manage the indemnity and compensation resources paid by the company to the Juruti Velho community. The main purpose of this foundation would be to assure good governance, accountability, and transparency in the use of money to support the communities’ economic and social development. The foundation would be created as a financial endowment, keeping the main capital intact and using the revenue for programs of interest to the communities impacted by mining.

The recommendation was accepted by the Parties through a “Term of Commitment” signed in 2018, as mentioned above, which also created an Executive Group, formed by the Federal Land Authority (Incra), the community association, and the company, to create the foundation, among other goals (INCRA, 2021).

The Executive Group was to define the foundation’s structure and rules, involving other stakeholders in decision-making and establishing a new community management approach to mineral income, based on both short- and long-term planning. The Parties worked together in drafting the foundation’s rules. However, in 2019, Acorjuve decided to withdraw from the multilateral process, stating disagreement with the proposed terms, specifically opposing the allocation of all resources paid by the company to the Foundation and the opening of its governance to organizations such as the Church and the local government. Conversely, the Association stood up for its native model, with governance limited to community representatives (Acorjuve, 2019). This move displeased the Executive Group and halted negotiations between the Parties, causing negative repercussions, especially for the company-communities relationship.



Confronted with this impasse, Alcoa and Acorjuve negotiated a bilateral “Protocol of Intent” to improve mutual trust, purpose alignment, and actions to resolve pending issues (Alcoa, 2020). The company agreed to not object to the native model for royalties defended by Acorjuve if it were approved by the Parties.

Finally, in late 2022, a new Joint Recommendation from the Prosecutor’s Offices revoked the earlier recommendation and dismissed the creation of the foundation to enable Juruti Velho community residents to receive indemnity payments, which are currently being directly distributed to families (60%) and the Association (40%).

Overall, one of the key challenges of the sustainable development of Juruti has already been described in the well-known Brundtland Report (1987), which defines sustainable development as “development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.” The way the stakeholders manage the resources in the present will finance the development of new expertise and capabilities for communities in the future.

Of course, Juruti households and Acorjuve have the right to manage the resources on their own. However, if these resources are distributed among the families without a strategic approach to the final objective of dealing with the mining income generated by royalties, the shadow of “boom and bust” will hover over the communities.

### **Concluding Remarks: Outcomes and Impacts**

The Juruti case is about conflict management and involves mutual respect and communication between a company, governments, and communities at various levels to establish a model for seeking common solutions for the use of land and shared value creation through meaningful multistakeholder engagement. This kind of engagement is one of the key factors explaining the agreements with traditional communities and government authorities signed by the company. The community strengthened its management skills and its dialogue with the mining company and other stakeholders, which also resulted in an improved capacity to understand and monitor impacts on its land and even to deal with other business interests, such as energy and lumber enterprises, for example.

Land tenure, compensation for mining damages, and the payment of royalties are significant historical achievements for the traditional communities and all other beneficiaries at the local and regional levels. At the same time, the new key challenge ahead is to keep improving both the collaborative governance, with rules for the decision-making process, representation, and access to resources, and the process at a higher level with full democratic participation of Acorjuve and its members.

The experience described here illustrates that it is possible to reconcile mining activities and communities’ traditional rights in the Amazon, aiming for positive social, economic, and environmental outcomes, based on meaningful engagement and a pluralistic governance approach.

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# MEANINGFUL ENGAGEMENT IN CANADA

## A Case Study of Doig River, a Treaty 8 First Nation

*Giuseppe Amatulli and Shona L. Nelson*

### **What Is Meaningful Engagement?**

Treaties are agreements made between the Government of Canada, Indigenous groups, provinces, and territories that define the rights and obligations of all parties and further set out the continuing treaty rights and benefits for each group. Treaty and Aboriginal rights are recognized and affirmed in section 35 of Canada's *Constitution Act, 1982* (Government of Canada, 2023). There are historic and modern-day treaties that set the relationship between the Crown and Indigenous Peoples on matters related, but not limited to reserve lands, annuities, education, hunting, harvesting wildlife, land use, resource development, and revenue sharing (Government of Canada, 2023). In the province of British Columbia, Treaty #8 (a historical numbered treaty) was signed by Indigenous groups in Northeastern BC between 1900 and 1915 (Doig River First Nation, 2023). Blueberry River First Nations, a signatory to Treaty #8 (as part of the Fort St. John Beaver Band), brought a claim against the province of British Columbia alleging the cumulative effects of industrial development authorized by the province had significant adverse impacts on the meaningful exercise of their treaty rights under Treaty #8, and the BC Supreme Court agreed (Devlin & Eidse-Rempel, n.d.). This case is important as the court interpreted Treaty #8 as "conferring a limited power on the province to take up lands under the Treaty. The province cannot take up so much land such that BRFN can no longer meaningfully exercise its rights to hunt, trap, and fish in a manner consistent with its way of life; this balancing of interests reinvigorates the Treaty relationship as having an ongoing basis. It is not just something that happened in 1899. Treaty No. 8 established the beginning of an ongoing relationship between Indigenous parties and the Crown that continues today and into the future" (Devlin & Eidse-Rempel, n.d.). The implications for meaningful engagement post-*Yahey* in this chapter provide examples of how engagement, consultation, and land use decision-making could occur in the future. *Yahey* has the potential to redefine the relationship between BC and Treaty #8 First Nations and create opportunities to jointly build new means and practices of engagement and move from adversarial and performative consultation to approaches that can achieve community consent on future resource development.

Engagement has been used to bridge a divide between the public's expectations and the operational reality facing decision-makers, with the success of one engagement and the failure

of another often being framed by public perception (Wilton, 2021). Decision-makers are acknowledging the importance of meaningful engagement. As stated in the preamble of the 2019 Impact Assessment Act (IAA) of Canada,

the Government of Canada recognizes the importance of public participation in the impact assessment process, including the planning phase, and is committed to providing Canadians with the opportunity to participate in that process and with the information they need in order to be able to participate in a *meaningful way*.

(IAA, 2019; emphasis added)

In the Act, it is also stated that

Meaningful public participation means that members of the public who wish to participate in an impact assessment have an opportunity to do so and are provided with the information and capacity that enables them to participate in an informed way and it also means public perspectives inform and influence decision-making and allows participants to see that their input was considered.

(CEAA, 2019, p. 4)

The IAA ‘is committed to implementing an approach that is inclusive and responsive to community needs.’ The Agency is also required to start early with engagement and ensure the broadest public and Indigenous participation is achieved by providing funding through the Agency’s Participant Funding Program. Indigenous engagement is also mentioned by the 2018 BC Environmental Assessment Act, when it is established that an engagement plan must be submitted by a proponent ‘in accordance with the requirements of the chief executive assessment officer [...] and including a proposal respecting engagement among the proponent, the office, Indigenous nations, municipalities, government agencies and the public during the early engagement part of the assessment.’ (BC EAA, part 4, 13(1)). Engagement is also about decision-making, relationship development and capacity building (Pearman & Cravens, 2022), and this is especially true within the context of First Nations as rights-holders. Meaningfulness requires respect and recognition of Indigenous sovereignty and rights as decision-makers on their lands and as full and equal governing partners in the decision-making processes affecting their lands (Papillon & Rodon, 2019, p. 3).

The leading role First Nations must have in decision-making over their lands and resources was reaffirmed in a new light in the court’s decision in *Yahey v. British Columbia* (2021). The Yahey case was the first case in Canadian legal history in which a First Nation (Blueberry River First Nation) sued a provincial government for the cumulative effects of industrial development intertwined with constitutional and Treaty #8 infringements (Amatulli, 2022, p. 160). Justice Burke ruled, among other things, that cumulative effects as a set of authorized industrial developments within the Blueberry River First Nation (BRFN) claim area resulted in the infringement of treaty rights and the taking up of lands had been so extensive that it left BRFN members with no sufficient territory to meaningfully exercise their treaty rights. The court established that BC could not continue to authorize activities that breach Treaty #8, and the parties needed to consult and negotiate to establish enforceable mechanisms to assess and manage the cumulative effects of industrial development on BRFN’s traditional territory to ensure the respect of constitutional and treaty rights (Amatulli, 2022, p. 167).

This decision paves the way for a new understanding of engagement processes while contributing to the shaping of new relationships between Treaty 8 First Nations (T8FNs) and the

BC government. Following extensive negotiations, on January 18, 2023, the Province signed individual government-to-government agreements with BRFN and six other T8FNs (including Doig River First Nation) to address the cumulative effects of industrial development in each Nation's territory. Key to these agreements is the commitment to establishing new approaches to decision-making regarding land management and acceptable levels and types of natural resource development (Government of BC, n.d.). These agreements have been praised as ground-breaking steps towards a new relationship that governments are willing to build with First Nations (Amatulli, 2023, p. 132).

Addressing the power imbalance in engagement can, in part, be remedied through government-to-government agreements. Section 6(1)(e) of the IAA attempts to address this by “promoting cooperation and coordinated action between federal and provincial governments – while respecting the legislative competence of each – and the federal government and *Indigenous governing bodies* [emphasis added] that are jurisdictions, with respect to impact assessments”, but falls short as “IA processes are not designed as collaborative decision-making systems; they are consultative exercises, and the final decision still rests with the regulatory authority” (Papillon & Rodon, 2019, p. 11). Nevertheless, Part 3 (7) of the 2018 BC Environmental Assessment Act provides that “Despite any other enactment and whether or not an environmental assessment certificate is required, a reviewable project may not, without the consent of an Indigenous nation, proceed (a) on treaty lands if the final agreement with the Indigenous nation requires this consent, or (b) in an area that is the subject of an agreement, between an Indigenous nation and the government, that (i) requires this consent, and (ii) is prescribed by the Lieutenant Governor in Council.”

These new assessment acts have been described as tools to help establish new rules to better protect the environment while recognizing and respecting Indigenous rights. This is to be achieved through better and more effective engagement with Indigenous peoples, with participation expected to start before the beginning of the formal impact assessment procedure. This is particularly true for the Federal Impact Assessment Act. By engaging during the planning phase, the intent is to build a relationship through awareness and trust and should be used to develop a Public Participation Plan where the inputs of the public and Indigenous groups are reflected, besides informing those actors on how and when consultation with them will be carried out (CEAA, 2019, p. 8). On the one hand, these Acts provide that when decision-making occurs, it is necessary to consider comments received by any Indigenous group consulted; on the other hand, however, they do not clearly define what meaningful participation is or how meaningful engagement with Indigenous communities should be done. To this end, *Yahey* may create advancements that can result in changes in the way engagement processes are understood, framed, and performed by establishing shared, joint, or collaborative decision-making models and tools to assess and manage cumulative effects. As will be explained in this chapter, and drawing on the experience of Doig River First Nation, new engagement models will need to be “inclusive of Indigenous worldviews that may well move beyond First Nations as stakeholders needing to be empowered, to models framed in terms of self-determination or nationhood” (Von der Porten et al., 2015; Wyatt et al., 2019, p. 377).

### **Ethics and Research Methods**

The conceptualization of this chapter started in July 2022, after receiving an invitation to attend a workshop on Stakeholder Consultation Regimes in Comparative Perspective at the

University of Ottawa, which took place on September 22–23, 2022. Building on the outcomes of the conference, fieldwork at I.R. #206 Doig River was completed.

Between September 26, 2022, and October 4, 2022, seven semi-structured interviews were carried out with key informants inclusive of DRFN employees and leadership (the Chief, Band Councillor, and Lands department employees). Of the seven participants, six were DRFN members. In addition, several unstructured conversations took place with members while attending community events at the Nation. The authors recognize that this is both a strength and a limitation of this chapter. On the one hand, interviewing members of the same Nation helps highlight similar challenges that a specific community may feel important to address in relation to similar issues. On the other hand, the homogenous nature of the group of participants allows only for limited comparison with other T8FNs, which might have different views on similar issues and challenges.

Such homogeneity can also hide internal disagreements that might arise when members do not have the same view regarding a specific project or when competing visions of future development arise. A case of internal disagreement and a mention of how it was handled is provided, with an explanation of how collaborative decision-making is implemented within the community. Another limitation of this chapter was due to funding and time constraints, as interviews were carried out in a week with key informants who were available during those days. Thus, it is important to consider what was shared by the interviewees does not necessarily reflect the views of all DRFN members or of other residents of northeast BC.

Before starting each conversation, explanations were provided as to why the research was being done, i.e. the interviews, their scope, how and where data collected would be used. Everyone agreed to be interviewed and to have conversations recorded. In this work, the anonymity of the participants was ensured by naming them with fictitious names. Although people did not express any concern about being explicitly mentioned, we consider it important to ensure anonymity to protect people's professional role within the Nation and their relationships with governments and industry. However, the names of the current Chief Trevor Makadahay and previous Councillor Garry Oker, as well as elder Jack Askoty, are not anonymized. They are important leading figures within the community, and anonymizing their voices would almost be interpreted by them as discrediting their opinions. Consent to mention their names was given during the interview stage. Collected data were stored on the two authors' e-cloud space and computers, and only the authors had access to it. Approval to perform the interviews and use data collected for the chapter to be published in the *International Handbook of Meaningful Stakeholder Engagement* was sought and obtained from DRFN.

The aim of this chapter was to gather data while highlighting the concept of meaningful stakeholder engagement based on DRFN experiences and definitions. Precisely, the chapter is aimed to answer the following research questions: 1) What is meaningful engagement? 2) How would you like to be consulted, and how do you envision an ideal engagement? 3) What about disagreement? Is it possible to express it? 4) Do you think there has been improvement in engagement processes over the last decade, and what would you like to further improve?

To analyze the content of the interviews and gather relevant indicators, an iterative thematic analysis was performed by using a word processing program and NVivo software, which is largely used to code and analyze qualitative data. Specific codes (single words or a set of two words) were looked up to understand how often, by whom and in relation to what issue specific keywords were mentioned and used to explain certain concepts in such a way that data could be categorized to derive specific patterns and themes from it.

### **An Introduction to Doig River First Nation and Its Engagement Processes**

DRFN is located 70 km northeast of Fort St. John, BC, and was part of the original Fort St. John Beaver Band with Blueberry River First Nations that adhered to Treaty #8 in 1900 (DRFN, 2023). The Crown sought treaty with First Nations to ensure access to miners during the Klondike gold rush (Tesar, 2016), and Treaty #8 has been referenced as “one of the most important of the post-Confederation treaties” by the Supreme Court of Canada (*Mikisew Cree First Nation v. Canada [Minister of Canadian Heritage]*, 2005 SCC 69 at para. 2). When First Nations signed Treaty #8, they were promised they could continue with their traditional ways of life “for as long as the sun shines, the grass grows and the rivers flow” (DRFN, 2023). Not unlike other First Nations, DRFN does not view Treaty #8 as a cede and surrender agreement, but one of peace and friendship and sharing of resources. The difference in treaty interpretation between First Nations and BC has been the catalyst for several court cases regarding consultation in the last three decades.

DRFN members are resilient, and although natural resource development has impacted their territory, the community and its leadership have always been open to engaging with industry, government, and non-Indigenous communities to protect their lands, water, and wildlife while participating in projects as part of the local economy (Ridington & Ridington, 2013). For DRFN, engagement regarding land-use and natural resources is managed out of the Lands department. Lands staff and members of the Council are often involved in multiple engagement processes with different actors, including community members, federal and provincial crown agencies, and regulators and industrial proponents (DRFN, 2023).

Internal community engagement consists of meeting regularly with the DRFN Council to ensure the Lands department activities are in alignment with the community’s vision, goals, and priorities and with DRFN membership, through band meetings, community cafés, workshops, field trips, and one-on-one conversations with elders, land users, and family groups. Engagement with Council is frequent, with informal conversations and formal meetings dependent on the topic or project. External engagement is twofold, with industrial proponents and with federal or provincial crown agencies ranging from simple applications to complex multi-regulatory referrals for major projects, land-use planning initiatives to annual or multi-year project plans.

Crown referrals represent the most direct and frequent form of institutionalized engagement between First Nation groups, the Crown and resource development proponents. A referral is, quite literally, the most common enactment of the legal duty to consult with a First Nation group anytime the Crown is about to make a decision that may impact Aboriginal rights.

(Persaud et al., 2020, p. 1603)

DRFN receives many referrals annually from the province, and accordingly it has set up the Lands department in a hybrid structure resembling a crown agency. As Persaud et al. (2020) notes:

the crown referrals process holds the potential to empower First Nation groups in their relationship with the Crown. But just as easily, this sets up the opposite: an impossible task and heavy burden for First Nation groups wherein the capacity to respond effectively and strategically requires robust ‘state-like’ institutions which, in the process of building, can risk a certain acquiescence to more dominant Western-liberal structures and economic forces.

(Persaud et al., 2020, p. 1604; Nadasdy, 2017; Pasternak, 2015)



Chief Trevor Makadahay recalls the history of DRFN Lands department and its initial set-up in the mid-1990s as a response to “*Notifications of Industrial Activity*”, where DRFN would charge industrial proponents a fee to review applications and referrals. As he explained:

I started my involvement in politics when I was quite young, and back then, we used to get what was called “*Notifications of Industrial Activity*”. So, they used to just notify us; nobody would come out to talk to us. That was their consultation, a letter from the Ministry of Energy and Mines, I think. That was in the early nineties.

### **Findings: Meaningful Engagement from a Community Perspective – Voices from Doig River First Nation**

Meaningful engagement has often been defined according to the view of governments (provincial or federal), with comprehensive First Nations inputs often lacking or not being included at all. Although, in recent years, there have been improvements in how engagement is defined and performed, there are still substantive differences between how governments and First Nations conceive, define, and make sense of it. For the former, engagement is necessary to reach a specific aim; for the latter, engagement is more about a relational process towards which mutually beneficial outcomes can be achieved. Therefore, it is not surprising that interview coding highlighted a strong approach towards people when engaging with communities. As a matter of fact, words such as members, people and community were among the most mentioned during the interviews, as emphasized in the word cloud shown below, generated through NVivo after coding the interviews (Figure 18.1).

Interviews conducted with DRFN informants for the purpose of this chapter often started with the question: ‘What is meaningful engagement, and how could it be defined from a community perspective?’ To this question, many informants answered highlighting the fact that for engagement to be meaningful, it should be less focussed on outcomes and more focussed on building relationships. Furthermore, it was stressed that engaging should not be perceived as a stand-alone process for just one project (for example, a pipeline or a cut block). According to the respondents’ view, meaningful engagement is about recognising that those things have long-term impacts on the land, on people and wildlife and on everything that’s out there.

According to First Nation epistemology, meaningful relationships can be built only if they are based upon consent, and true engagement itself requires achieving consent (Simpson, 2014, p. 15). As Respondent 1 pointed out, building trust and relationships is only an initial step; after that, there needs to be ongoing engagement with community members. Any success story at DRFN is linked with proponents or government employees that people are aware of, ‘*where people can put a name to a face*’, as highlighted in several conversations. Proponents or agencies must go to the community and chat with members to connect with people in a genuine way, that’s how meaningful relationships are created, and trust earned. The first steps might be slow and initial meetings might not generate any tangible results. That’s part of the process, it serves as a foundation for a deep and strong relationship (Gamble & McQueen, 2019, p. 4).

On different occasions, respondents suggested that meaningful engagement is about building relationships with community members while recognising that development projects have cumulative impacts in the long term. Final outcomes should not be the main and only



Figure 18.1 Wordcloud

Note: The words highlighted in orange are the ones most frequently mentioned during the interviews.

purpose of the engagement process, as stressed by the DRFN-BC Hydro Community Liaison (Respondent 2).

Meaningful engagement is about making an effort to connect with the community and not just showing up for a paycheque. I think having companies come out here and show their engagement with us, that they want to see us succeed, not just their company succeed, I think that's meaningful to me.

Meaningful engagement is believed to be a reciprocal relationship that should bring benefits to different actors involved in a process, as outlined by the DRFN Oil and Gas Program Manager (Respondent 3).

Meaningful engagement is having successful results due to the leading agenda in the process. So, you know, industry understands what we require, what we ask, and we understand what industry wants. So basically, it's about a mutual understanding.

Meaningful engagement should also be perceived as a process, in which mutual understanding is key to building trust and relationships between community members and industries, with the aim of building capacity while reflecting different cultural ways of knowing (City of Toronto SSHA, 2019, p. 3). To be meaningful, engagement must be understood in a holistic way, as highlighted by Chief Trevor Makadahay:

When I think about meaningful engagement, I think of a process where I feel part of it, and I put all my worries at rest. I think about the environment, the wildlife, the whole.

This way of conceiving meaningful engagement is strictly connected with the Indigenous ontology and ways of knowing. According to the Indigenous worldview, the whole person (with their spiritual and physical features) is interconnected to the land (with its sentient as well as insentient beings) and with other entities – such as family, community, and nation- (Cull et al., 2018, p. 25). It is not surprising that engagement defined in Beaver language has some community features into it. According to Jack Askoty, a DRFN elder, engagement can be translated in Beaver with the word ‘Tlę jedaayiih’ which means ‘Engagement for people – it’s like having two horses going together.’

Engagement is meaningful when the whole community can have a say throughout the process, and even before it, through pre-engagement opportunities that industry should develop with DRFN and its community members. In addition to being considered a feature of the ideal way of engaging, pre-engagement is often perceived as an important requirement to build trust and relationships with a community. As Respondent 3 highlighted:

I think if companies would come out here and talk to the people, having no agenda, just showing up and hanging out and having a conversation, that would be appreciated. Like, it doesn’t always have to be real business. I think just like, showing up and being like, ‘hey, I brought coffee to spend time together’, that is probably part of building trust and relationships.

Nevertheless, proponents and government staff may lack the cultural capacity to hear the voices of community members, reducing the process to uncomfortable visits that do not produce any meaningful results (Arnold et al., 2023, pp. 39–40). As explained by many informants, there is still an attitude by some companies to visit the community and expect to receive consent to a project after a few visits. This is an old way of engagement, and from a DRFN perspective, building relationships first is the foundation of Indigenous community relations. In this sense, Joseph (2020), suggests trust could be earned as a foundation of an effective pre-engagement strategy by implementing the three Rs of engagement:

- Research – Before engaging with a community, it is important to have a good understanding of its history, cultural and spiritual practices, governance and decision-making structures, the role held by hereditary leaders and elders, community priorities, socio-economic situations, and relationships with other project proponents.
- Respect – Acknowledge and appreciate the history of the community, the ongoing impact of colonialism and the *Indian Act*, cultural differences, and different worldviews (in terms of doing business, the timeline of approving a project, the different priorities a community might have).
- Recognition and regard for the rights of Indigenous Peoples – Respect Indigenous peoples’ rights as defined in Section 35 of the 1982 Constitution, and as defined in the UN Declaration on the Rights of Indigenous Peoples (with a particular reference to FPIC).

Pre-engaging as an ideal way of initiating a meaningful relationship with DRFN should be acted upon by taking the future into account, considering the impact a project might have on members’ lifestyles and the Nation’s goals. As explained by Chief Makadahay (2022):

I think that part of a true (pre)engagement process would be to clearly communicate what the disturbance is going to be and what future plans for reclamation are. Industrial activities will leave a loss on the land, in terms of hunting and trapping opportunities,

as well as for the use of medicinal plants. So, we need to somehow mitigate that, and it will take quite a bit of time to heal, to heal that loss. So how we mitigate that loss is important.

Garry Oker, previous Chief and Councillor of DRFN, asserts that engagement really is about sparking the vision that a community has of the future. In his opinion, for industry or the government to engage meaningfully with the community, it is important to consider and understand the community's comprehensive plan. As he posits:

You can't expect other people to do something that you can't do, or you can't articulate. That's why when we meet with companies we say, here's our community, we've got 335 people, and here's our vision. This is what we want to do. Now, what can you do to help us figure out our assets? Articulation is so important because we tell industry and the government, this is who we are, this is our rights, and now we are reclaiming a lot of our land, and we want to protect it.

Lands department staff noted improvements in engagement and pre-engagement processes that have been achieved in recent years. However, having improved engagement procedures does not necessarily translate into less work. As Respondent 3 puts forth, the main problem today is the capacity of DRFN Lands staff to manage the quantity and complexity of applications that keep coming in:

We are inundated with project proposals in the lands department, there is so much going on. Plus, as employees, we also play a role in a lot of other different community-based programs, such as emergency operations, the land code, etc. So, we wear three different hats, and we get over-cycled in all our daily activities; or sometimes, you know, we lose a lot of time with focusing because we're engaged in all those other projects as well.

In addition to this, the approval of the DRIPA Act is further stretching the capacity of First Nations. As recently highlighted, Indigenous leaders welcome the fact that the government needs to carry out consultation with First Nations on the Act; however, they are concerned this will further stretch their capacity to operate and carry out their day-to-day activities.

Capacity is an ongoing issue facing the DRFN Lands department, for example, when working with BC Hydro, respondents shared the opinion that it is difficult to meet the deadlines because of the limited capacity. As described by Respondent 3, the Lands department is constantly overwhelmed with work for project approvals and unrealistic deadlines, causing challenges that include explaining complex projects to DRFN members in English and Beaver, assessing how community members' needs are considered, whether projects should receive a greenlight and finally ensuring DRFN members' concerns are clearly articulated to government and industrial proponents. As pointed out during our conversations, engaging with Lands department staff, and engaging with community members might be different and require different strategies, time, and extra effort. Expressing the importance for industrial proponents to directly engage with community members, Respondent 1 stressed that:

Engagement is not just coming in, sitting in a boardroom with the Lands office and that's it. Engaging with members is much more complex. Industry needs to come out and take the time to connect with people. And that's important for us as well, as we take the time to learn about, you know, where do people traditionally hunt? Where does each family spend their time? What areas are more important?

As for making sure members are involved in a consequential way, Respondent 3 said that world cafés are effective and the Lands department frequently organizes meetings, special field trips and other events to engage and inform members of what is being proposed and then discuss what is important for the land and the community.

World cafés were initially set up at DRFN to engage members internally on DRFN programs, services and updates; but have evolved as the Lands department organized them and industrial proponents funded engagement initiatives. Respondent 3 highlighted that industry comes from time to time and hosts information sessions with a community luncheon. Engaging one-on-one over a meal after a presentation with community members often facilitates positive relations directly with DRFN membership.

Environmental and cultural monitoring trips organized by the Lands department with industry support proponents in sharing their message with members while engaging on the land with them. This is an important step in the engagement process, being on the land, observing and learning traditional knowledge and practices supports a more comprehensive understanding of Indigenous land use and the cultural values attributed to site-specific ecosystem services. Monitoring opportunities are created for DRFN members and elders to collect traditional ecological and cultural data, facilitate the intergenerational transmission of Dane-zaa culture and create meaningful employment for members who may not be fully attached to the non-Indigenous labour market. Industrial proponents notify the Lands department in advance of seeking regulatory approval in which areas they are planning to work. As Respondent 3 explains “Industry always let us know if there are opportunities for members. Our elders can monitor projects, and that’s part of building that relationship with industry as well.”

Having members performing monitoring activities on the land is important for two reasons. On the one hand, it gives the community the opportunity to build meaningful relationships with industry; on the other, it provides a well-paid job to community members while being on their traditional territory. When members are monitoring on the land and receiving compensation, they feel valued and engaged. Cultural and environmental monitoring also benefits the companies two-fold: it provides traditional and ecological data that informs potential project mitigations, and it also demonstrates a social and economic project benefit to DRFN and its membership by providing community members with tangible opportunities to earn an income.

### **Consent to a Project or Consent to an Agreement? The Role of Silence in Engagement**

While carrying out interviews, interlocutors indulged a bit longer than usual on an issue that is perhaps not well-known when it comes to engagement processes and related outcomes. Often, attention is placed on engaging community members, with the aim of getting the go-ahead for a project to be realized on DRFN’s territory. However, it is not clear whether members give their assent to a project, or more to the agreement (i.e., Impact and Benefit Agreements – IBAs) that comes together with the acceptance of the project. This is a reflection the authors elaborated on during the workshop on Meaningful Stakeholder Engagement we attended at the University of Ottawa in September 2022.

During a discussion, a practitioner from Perú pointed out that, in some cases, there might be a difference between giving consent to a project and giving consent to an agreement. Whereas benefits are known and written in the agreement; it is a bit more difficult for a community to decipher what a project might generate throughout its development and existence,

in terms of positive and negative impacts, which are not always possible to predict. As argued by Papillon and Rodon, Indigenous communities might sign IBAs not because they really assent to the project, but because they have little choice, also considering that in many cases the project will go ahead even if they oppose it (Papillon & Rodon, 2019, p. 324). This has been the experience with DRFN on major projects such as BC Hydro's Site C Clean Energy Project, where community members did not "consent" to the project but accepted the agreement and "non-objecting" to it and the future project permits when signing off on the IBA. In some cases, pre-*Yahey*, the project may have already been approved, and the Nation was left with no choice but to sign an agreement without formal community consent.

Respondent 2 pointed out that it is difficult to have a clear picture of the issue, as this is a 'grey area'. However, it is sometimes possible that members give their consent to the project and to the agreement it brings (with its benefits) without necessarily making a clear distinction between the two. On the same issue, Respondent 1 provided a similar answer, saying that it is very difficult to understand whether members are happy about the agreement that will bring benefits to the community or about the project. Often, it is a combination of the two things. These reflections were important to highlight another relevant aspect of performing meaningful engagement with a community: the role of silence. As Respondent 1 pointed out "I think in some cases there is hesitancy. It's just hard for people to say yes, also because of what happened in the past. So, sometimes they are silent when discussing an agreement in relation to a proposed project."

Silence has an important role in community engagement sessions, even if sometimes this is not understood or duly considered. Ethnographic research with Australian Indigenous people demonstrated that silence can be a sign that people need more time to think about a relevant issue. Furthermore, in engagement processes, there are prolonged pauses before information is provided (Eades, 2007, p. 285). This is especially true when engaging with community members through interviews. In such cases, people often feel pressured to provide answers without having enough time to think about the questions they are asked, while interviewers express frustration for not being able to get the information needed (Eades, 2007, p. 286).

The way consultation is performed has improved and evolved over the years, and such an improvement is not limited to industry and government, but also to the Lands department in how it engages with DRFN membership. Respondent 1 continued by saying there are people who listen to what is proposed, but they do not always speak out. In those cases, following up with them individually or in smaller groups may be necessary. It has also been observed and experienced by the authors that DRFN members are more amenable to providing additional information on what was discussed when in a more private and comfortable environment. As it was specified: "Not everybody feels comfortable in speaking up in those situations. So, it is important to tailor that engagement to different people, as some people might just be better at having this kind of one-on-one conversations."

In this regard, Respondent 1 said it is challenging to ensure everyone has a voice in consultation processes and meaningful participation in decision-making. As explained:

We try to make sure that if we're talking about, you know, a proposal in a certain area, that we are actively engaging with the families that use the area. So, we're trying to get more tailored feedback on those certain areas. I think that helps, and, just tailoring your engagement, you know, let's say you might have that kind of open house style meetings, or you might have a one-on-one. You might have more informal discussions with people to be able to make sure that you're capturing as broad an audience as you can.

Community engagement in decision-making processes can facilitate expressions of consent, but there is a risk of alienating band members if this process is disconnected from community-level processes. Thus, negotiations with the government and proponents “should be informed by and intimately connected to a deliberative process that allows for the free and transparent expression of a community’s diverse perspectives, worries and interests” (Papillon & Rodon, 2019, p. 7). As Respondent 1 pointed out:

The general democratic approach is like, if we have the majority, let's go for it. But for Indigenous people, it's not quite like this. It is about the community and, you know, achieving at least, or trying to achieve, broad consent given by members.

Delving into the issue of engaging within a community, Respondent 1 also pointed out that it is difficult when members have very different opinions on the same issue, for example, when there is a group that is pro-forestry and another against it. As she said:

How do you approach the pie between those two points of view and have some? So, we try to focus things on like, what are the benefits to Doig? What is coming back to the community if we agree to this project? Is it long-term funding for education? Is it those tangible things like firewood, lumber, you know, those kinds of things? And it's also the ability to influence the proposal. I think that helps.

Such a conversation brought Respondent 1 to mention a recent example the Lands department and DRFN members experienced, a referral related to herbicide applications in a specific area for which DRFN members had opposed. As it was explained:

In early 2022, there was a block that companies wanted to herbicide just up in the Osborn area here. And I told them that Doig did not agree with any herbicide happening, and they obviously were playing with things, you know.

The companies insisted that applying herbicide in the area was the only viable option and as a response, Respondent 1 invited corporate delegates to go to DRFN and talk to the members.

They were obviously not hearing it from me that no, it's a no! So, they actually came out to Doig, and we had them talk to people. There were like ten people in the room. They kind of all talked around. And you know, I tried to facilitate the conversation and at the end of it, they were like, ‘okay, yeah, we're not going to do it.’ So, that was kind of like one small win.

The fact this proponent went to DRFN and engaged directly with community members was perceived by the Lands department as an improvement compared to past engagement practices with this company (who recently had signed a Relationship Agreement with DRFN). The positive outcome of this interaction demonstrates that proponents may receive the message better when delivered by DRFN members, instead of DRFN employees. Listening to the people who share their lived experience in terms of hunting and trapping, and the impact development activities have on land use (to the point that people are not able to trust the meat they harvest, or the fact that there is less moose due to logging), contributes to a more

complete and robust understanding of how industry should engage and develop throughout the lifespan of a project or its ancillary activities.

Building a project together requires engagement beyond simple performative consultation or inclusion in developing mitigation strategies. Implementing comprehensive engagement requires taking a further step that includes recognition and implementation of a community-based deliberation process that informs and feeds into a collaborative process with governments to allow for the co-construction of decisions (Papillon & Rodon, 2019, p. 17). In this model of engagement, there must be a self-defined internal process for a community to deliberate and express its consent, and in doing so First Nation jurisdiction is asserted and rights-holders' interests are respected and not just considered stakeholders involved in a project. As noted by Respondent 1, there has been improvement in First Nation engagement by industry because they have designated Indigenous relations positions. According to Respondent 1, having an Indigenous relations employee, assists in building the willingness for companies to take longer to pre-engage, engage, and enter into agreements with a Nation.

I think there has been a change, especially in forestry. Like, before working at Doig, I was sending out referrals and it was very transactional. It was very much like 'I'm going to send this out. And what do I have to do after? What are my obligations on that?' We had meetings, of course, but it was never really like the way it is now. And so, I think that there's been quite a shift and, you know, we learn, and we improve processes and get your feedback and we change and we kind of continuously improve. I think has really come a long way and has really improved.

Getting access to the land in an enhanced and more frequent way is seen as a more sustainable approach to resource development combined with community-based deliberation and consent. As remarked by Respondent 1, improvements exist when it comes to consultation and engagement, including consultation and strategic engagements at a policy level. However, as it was pointed out:

It is still really challenging trying to bridge that gap between the Western world government and the Indigenous way of governing. So, if you want to do a moose study here or a fish study to apply this kind of Indigenous worldview; you can't really talk about moose if we're not going to talk about habitat and water and air and all other interrelated things. There is a need to use this kind of holistic approach, you know. In the end, it really takes willingness for them to, you know, apply it. And so, that's why I think education is really key and putting faces to names. Because, in the end, these are real people, right?

### **Conclusion – The Meaning of MSE for Doig River First Nation in a Post-Yahey Context. Implications and Future Developments**

DRFN has actively participated for many years in consultation and engagement initiatives with government, crown corporations, regulators, and industrial proponents ranging from grazing tenures, and herbicide applications to major projects such as BC Hydro's Site C project. By negotiating new government-to-government agreements with BC, it is hoped DRFN's perspectives on land use, consultation, engagement, and consent-based decision-making will be implemented. More specifically, the outcome of negotiations should ensure that decisions



regarding land use on DRFN territory are made in a manner consistent with the principles outlined by the British Columbia Supreme Court (“BCSC”) in *Yahey*, in recognition of and compliance with the principle of the Free, Prior, and Informed Consent and with the proper identification, contextualization, assessment, and accommodation of DRFN rights.

The *Yahey* decision has significant implications for DRFN on the basis that Treaty #8 promises were made to all signatories, including the Fort St. John Beaver Band, which is the predecessor of DRFN and BRFN. Land within the BRFN Claim Area holds ceremonial, cultural, and spiritual significance to DRFN members, and there is substantial overlap between the BRFN Claim Area and DRFN’s territory. The eastern portion of the BRFN Claim Area almost entirely subsumes the area over which the British Columbia Energy Regulator (BCER, previously BC Oil & Gas Commission) consulted with DRFN on oil and gas referrals. The approval of referrals and corresponding oil and gas activities has contributed to the cumulative impacts of industrial development in DRFN’s territory. Considering that DRFN’s core territory is in the eastern portion of the BRFN Claim Area, and this area experienced a greater density of development than in the west, there is no question that DRFN members are experiencing the impacts of cumulative effects on par or greater than BRFN. The claim overlaps with DRFN territory, and historical cumulative impacts clearly demonstrate the requirement for more robust engagement and a significant role for DRFN in land use decision-making entrenched in new government-to-government agreements. This will be a primary focus of ongoing negotiation between DRFN, the BCER and BC natural resources ministries.

A new relational approach recognizing DRFN’s role as the rights-holder will need to be implemented to achieve consent through community engagement and by focusing on both the agency of DRFN to make decisions for themselves and joint decision-making with the Crown. This approach could create a mutually beneficial model for DRFN, BC and industrial proponents. Nevertheless, this model and level of engagement, inclusive of policymaking, strategic planning, or decision-making requires expertise and technical knowledge that DRFN may not yet have, thus creating a power imbalance (Papillon & Rodon, 2019, p. 18). Ongoing capacity building and financial resources will be needed as joint decision-making processes cannot fully address this imbalance. Moreover, this approach will require intergovernmental cooperation to establish mutual expectations while facilitating the exchange of information, coordination of decision-making and ensuring meaningful engagement from a DRFN perspective. Such a combination may well create new opportunities for BC and DRFN to build new means and practices of engagement and be the catalyst for shifting from previous modes of consultation to reconciliation and the development of consent-based decision-making models embedded with Indigenous values about acceptable land use on treaty lands.

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# 19

## CREATING MEANINGFUL COMMUNITY ENGAGEMENT OUTCOMES

### A Practitioner's Perspective

*Jason Prno*

#### **Introduction**

I often get asked questions from resource developers about community engagement strategies. Why do some companies have good community relations while others have contentious ones? What leads some projects to become bogged down in the regulatory process (or worse, rejected), or subject to protest and negative media coverage? Why do others succeed? What guidance is available for proponents to ensure better outcomes?

I've gained a unique perspective on this topic through many years working as an industry consultant in northern Canada, and through my academic research on community relations in the mining industry. What have I learned through all this? Well, that answers to these questions are complex and that solutions can often be just as diverse as the challenges. What works in one area will not necessarily work in another; furthermore, simple solutions rarely exist for difficult problems.

Before advancing this discussion further, however, it should first be made clear that an engagement practitioner's job is foremost about establishing relationships with *people* and navigating their endlessly unique experiences and characteristics. Their emotions matter. Their perceptions matter. Their politics, history, and traditions matter. Their families, livelihoods, and aspirations matter. It *all* matters. If they didn't, our job would be fairly straightforward. But give me a community with even a little bit of diversity (which is all of them!) and, well, that's where things start to get interesting.

So, what works? Certainly some strategies do, in particular situations. The literature is full of insightful case studies, useful best practices, and promising theory – all of which should be studied by the prudent practitioner. But rather than searching for 'golden bullet' strategies that will always achieve success (they won't) or guarantee certain outcomes (they can't), we must instead embrace the complex, dynamic, and uncertain nature of our work. My brief take on meaningful community engagement in this context, and the principles that encourage it, is found below.

## **What Is Meaningful Engagement?**

What do I mean by ‘meaningful’ engagement? This is a loaded term, but core elements exist (a more thorough review of this topic is provided in the introductory chapter). Foremost, meaningful engagement is *conducted ethically* (e.g. it is truthful and transparent, open and non-coercive, culturally appropriate, and consistent with relevant law). Without an ethical foundation, engagement simply cannot be considered legitimate. Secondly, *adequate opportunities for information sharing* with communities must be made available. The degree of information sharing will vary with each proposal, but at minimum must respect local preferences and timelines, and ensure communities can understand a proposal and develop informed opinions about it. Thirdly, *community stakeholders must feel heard and respected*. This doesn’t mean they must always support a proposal or even agree with the decisions that are ultimately made (e.g. by a proponent or regulator), but they must believe the process leading to those decisions was balanced and fair. Finally, *decision-making must give due consideration to community feedback*. Incorporating community feedback into the design of a proposal is ideal and provides tangible evidence of local views being considered; however, providing adequate rationale for when this feedback is dismissed is just as important.<sup>1</sup>

Admittedly, I present in this chapter an industry practitioner’s perspective on meaningful engagement that not all stakeholders may fully embrace. Industry-led engagement is but one avenue available to achieve meaningful community engagement outcomes, albeit a prevalent and crucial one in northern Canada. I acknowledge the important roles government, civil society, and communities themselves can have in this process (and that some observers desire enhanced roles for these groups), as other chapters in this book attest.

Luckily, there exists a burgeoning literature from which we can all draw valuable insights, including that on public participation, stakeholder theory, sustainability, governance, and complexity/resilience (e.g. Barton, 2002; Diduck et al., 2015; Freeman et al., 2007; Mitchell et al., 1997; Pring & Noe, 2002; Prno & Slocombe, 2012, 2014). Various best practice guidance also exists for different sectors and contexts (e.g. André et al., 2006; Arctic Council, 2019; Croal et al., 2012; ICM, 2015; Morrison-Saunders & Arts, 2023; PDAC, 2023; Vanclay et al., 2015), and a growing base of practitioner-oriented knowledge has begun to emerge. I’ve drawn on the above and my own professional and academic insights to identify six principles that encourage meaningful community engagement for large-scale resource developments in northern Canada, as described below.

## **Principles for Meaningful Engagement**

### ***There Are No Guarantees***

It can be a difficult truth for some proponents to swallow, but there simply are no guarantees a community will ever support their project. Some developments stretch stakeholder comfort zones too far, introduce too much risk (perceived or otherwise), or are misaligned with community development goals. In these cases, there may be no amount of consultation sufficient to overcome the challenges. Believe me, it’s both a sobering and extremely disappointing experience to work on a project that fails because of stakeholder concerns. No one involved takes pleasure in this.

There are important insights to be gleaned here, however. If we can acknowledge at the outset of each engagement program that it's a *privilege* to earn the trust of local communities and have a development proceed, and that some things will always be beyond our control, our entire approach will change. It will go from treating community engagement as a pre-ordained 'checkbox' exercise, to one that is more appropriately focused on humility, respect, and managing complex community relations through long-term commitment and adaptation.

Actively listening and responding to concerns are keys to gaining local trust. Substantial efforts must be made early in the development cycle to prevent stakeholder crises from arising that could have been otherwise addressed. Issues can't be left to fester, as community opposition creates many well-documented challenges for proponents. Regulatory and reputational risks may be created. Protests, blockades, and investor activism can occur. Economic and project viability effects may arise. There is no easy path forward for proponents in these cases. Re-imagined project designs, a development 'pause' to reset strained local relations, and even project abandonment may all need to be considered. Otherwise, very difficult decisions will often need to be made by proponents, regulators, and financiers as to whether these projects should proceed further.

### ***Context Matters***

With the above being said, there is nevertheless a lot that can be done to encourage meaningful community engagement. Regional and international best practices are a great start. Know them. Apply them. Adapt them to your context. This latter point can't be stressed enough. Every community, jurisdiction, and project is unique. Heck, the diversity *within* communities is often substantial and must be addressed. (How are you defining your 'community' anyway? Are your social and spatial engagement boundaries appropriate?) Why should we think a boilerplate engagement plan will suffice in these instances? Your most valuable resource here will often be community members themselves. *Ask them*. How do they want to be engaged? Who do they think should be involved and on which issues? What would a meaningful engagement process look like to them?

In northern Canada, where I work, the context is overwhelmingly Indigenous. Local cultures and traditions remain strong, Indigenous connections to the land are steadfast, and the wisdom and Traditional Knowledge of Elders is highly valued. This region also benefits from several comprehensive land claim agreements, robust regulatory regimes, and various requirements (never mind de facto expectations) for Indigenous consultation. However, it also has deep socio-economic inequities, a tragic history of colonialism and abuse, and other ongoing challenges. Every community has their own unique strengths and weaknesses for confronting these issues. Practitioners ignore these matters at their peril.

One of the more effective strategies I've encountered here is the hiring of community members to become part of a company's engagement team. There is simply no substitute for their knowledge of the people, community history and events, or the logistics support they can provide (e.g. Who do I call to...? Who is in charge of...? I'm having trouble doing... Can you help with...?). The sounding board of ideas and ground truthing of local rumour versus facts they provide is invaluable. They can also help build bridges with community members who may otherwise be hesitant around industry 'outsiders'. Furthermore, benefiting communities through employment opportunities is never a bad thing, and helps further demonstrate a commitment to meaningful local engagement.

### ***Treat Everyone with Respect***

How would you feel if a major industrial development, full of both promise and uncertainty, was being proposed in your neighbourhood? In your backyard? What if it were going to displace land you and your family had used for generations? How would you want to be communicated with and heard? It's not difficult to imagine the emotions that could be involved, the hesitancy and trepidation that might exist, or the need for meaningful discussion and answers. This should go without saying, but every engagement program must have stakeholder trust and respect as its foundation. 'Treat others how you would like to be treated' is a golden rule for good reason, and is necessary for cultivating meaningful relationships. However, let's never assume we all have the same expectations in this regard; be sure to understand the individual needs and protocols of your stakeholders first.

It's going to take a lot of time to build rapport and trust in these large-scale resource development settings. *A lot*. In northern Canada, it's not unusual for community engagement programs to run for 5–10 years *before* the first shovel is put in the ground. And, as hard as it is to earn stakeholder trust (what some might call a 'social licence to operate'), it can be lost in a heartbeat if you're not careful.

Having a genuine interest and concern for the stakeholders you're engaging is important, but it is equally important to ensure the company representatives leading your engagement program are a good fit. Not everyone can do this work effectively and simply throwing warm bodies at large engagement initiatives is going to have undesirable consequences. If I were a stakeholder, I would want to see the same faces at every meeting I attend. I would want the proponent's representatives to remember my name and concerns. I would want to believe that what I say is actually being listened to and addressed, and not just recorded in some consultation register to address government (or third party, etc.) requirements. I would want to be treated with respect.

### ***Contribute to Sustainability (However Defined)***

Even the most well-resourced community engagement programs are doomed to fail if the projects they promote don't advance basic sustainability considerations like environmental protection, social benefit, and economic development. We live in a world where 'sustainability' is increasingly part of our vocabulary, and relevant conflicts and events are reported on in real time through the media. This is no less true in northern Canada, which has seen its share of both resource development successes and controversies. Here, subsistence wildlife harvesting by Indigenous peoples and environmental integrity remain central concerns. Indigenous communities now also demand (with good reason) to be economic partners in the developments occurring on their traditional lands, with meaningful social benefit being a key precondition for issuing their support. Where such considerations haven't been addressed by northern proponents, conflict and uncertainty have typically followed.

However, we should never pretend to know what a community's development goals are without first soliciting their views on the topic. This is true regardless of where in the world you operate. Sustainability can be a nebulous concept at the best of times, and a good portion of the practitioner's work should be spent figuring out how their stakeholders are defining it. What are the community's development priorities and concerns? How might resource development contribute to community sustainability? What are the 'red lines' that must not be crossed? What can be done to maximize the economic contributions of the project? Once answers to

these questions are obtained, the practitioner will be much better equipped to mitigate concerns and develop strategies that enhance benefits.

Ongoing communication is important, as project management strategies may need to be adjusted over time based on the feedback received. Addressing any issues of local misinformation or misunderstanding is also necessary, as opinions based on perception can have relationship impacts that are just as ‘real’ as facts. Vague proponent commitments do not often suffice for communities wanting a response to their concerns. Concrete actions should be developed for all priority issues identified by stakeholders.

### ***It’s Hard Work***

Make no mistake about it – Meaningful community engagement is hard work. Be ready for it. The days can be long, the travel and numerous meetings can be tiring, and your personal commitment to a program may need to run for several years. Stakeholder emotions often also run high, and maintaining professionalism while constantly in front of rooms of people requires a certain type of stamina and humility from the practitioner. Relationship building can’t be done overnight; you and your team need to be in it for the long-haul.

There’s also the planning and logistics to consider. In parts of the Canadian Arctic where I work, communities (with populations of typically less than 2,000) are located many hundreds of kilometers apart, without roads between them. Local resources and capacity are often limited upon arrival and the weather regularly wreaks havoc on travel schedules. Planning even a week-long community engagement tour can take several weeks to months, involve multiple personnel, and require substantial financial outlays. Put more simply, good engagement programs for large resource development proposals are done neither fast nor cheap.

Furthermore, creative effort may be required when novel solutions to community concerns need to be developed, significant gaps between company and community perspectives exist, or when available corporate resources (e.g. financial, personnel) become a factor. The sheer amount of new information being provided to communities also means they often need ample time to digest it. Feeling ‘rushed’ is a common concern raised by stakeholders, and one that has led to poor outcomes for project proponents in the past. And for those proponents fortunate enough to have earned their regulatory approvals, the hard work of meaningful engagement doesn’t end there; in many ways, it’s just the beginning. Major resource developments typically have lifespans of decades or more, with expansions and permit amendments being a regular occurrence. Ongoing engagement and community support is needed throughout.

### ***Manage for Complexity***

While community engagement contexts can be complex and full of uncertainties, this doesn’t mean they are necessarily *unmanageable*. However, the practitioner’s aim shouldn’t be to control complex situations and people (an impossible task), but rather to continually solicit and analyze feedback from stakeholders to better understand and address their concerns. Various strategies can be employed to help make sense of the information received. For example, the practitioner may split (i.e. for analytical purposes) a community of multiple stakeholders into smaller (simpler) groups, affiliations, and perspectives. Focus can then be placed on addressing the key issues and concerns of each, rather than the more ambiguous ‘community’ as a whole.



However, the practitioner also needs to focus on what can be reasonably achieved with the resources they have available; rarely (if ever) can every single stakeholder be engaged and have their individual concerns fully addressed. We must prioritize our efforts, while always aiming to reach the widest audience possible.

Managing complexity is made easier by effective information management. Being able to track stakeholder interests, document issues raised, and analyze pertinent information in an ongoing manner is essential. There are various stakeholder management and qualitative/quantitative analysis software programs available for practitioners to use; the key is actually *using* them. Assigning internal champions to lead these efforts can be important. Depending on the project you're involved in, many hundreds of individual stakeholders and meetings may need to be tracked, and thousands of pages of meeting notes and other records may need to be documented and assessed. Practitioners must also regularly update these records in order to monitor progress, track important stakeholder/organizational changes, and report on outcomes. Reporting is increasingly necessary to address various internal and/or external Environmental, Social, and Governance (ESG) commitments.

Finally, managing for complexity entails employing an adaptive approach. As 'outside' practitioners whose connection with a community is often temporary or intermittent at best, we may never come to fully understand the nuanced lives of the stakeholders we engage, let alone predict every action they will take. To help address these uncertainties, engagement programs must be designed with adaptation and continual improvement in mind. The program you start with will likely not be the exact same one you finish with, and allowances must be made to address new issues that emerge.

### **Closing Remarks**

There is much more that could be said, but a great deal of the practitioner's work is about regularly getting into the field to engage and listen to your stakeholders, keeping on top of emerging information and trends, continually adapting and adjusting to your local context, and always striving to do good work. It's a tough job and your 'blueprint' for success may be one that is in fact developed on the go. But, it can also be very rewarding work, result in meaningful project-level changes being made, and ultimately lead to improved community development outcomes.

### **Note**

- 1 In the context of northern environmental assessment, in which I often work, Arctic Council (2019, p. 17) succinctly defines 'meaningful' engagement as "a process of participation that is promoting and sustaining a fair and open dialogue. It recognizes the needs, concerns, and values of the public and provides the public with a genuine opportunity to influence decisions made during an [environmental impact assessment]."

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# A GENDERED APPROACH FOR MEANINGFUL STAKEHOLDER ENGAGEMENT

## The Case of Women Affected by a Mining Disaster in Brazil

*Flávia Scabin, Júlia Ferraz, Marcela Garcia and Chiara Passoni*

### Introduction

After a hurricane, an oil leakage, a flood, or a mining dam burst, whose voices are heard, and whose needs are considered with regard to remediation measures? Do gender relations influence how affected people participate in post-disaster recovery, and, if so, what are the consequences of this on women's lives and remediation rights?

Previous studies have already identified that women suffer the impacts of a disaster differently than men (Enarson & Meyreles, 2004; Enarson et al., 2018; Gaillard et al., 2017). International standards point out that the lack of a gender perspective in rebuilding the territory can accentuate structural inequalities that impose barriers to women's access to their rights (CEDAW, 2018; UNDP, 2014). The literature shows that women are often excluded from decision-making spheres of disaster governance, and, thus, their vulnerabilities are not considered in loss and damage remediation (CEDAW, 2018; UNDP, 2014). Moreover, in post-disaster contexts, case studies have identified an increase in domestic and gender-based violence (UNISDR, 2007, 2011; Parkinson & Zara, 2013; Thurston et al., 2021; Wilson et al., 1998) as well as a scenario of social suffering that deteriorates their mental and physical health (WHO, 2002, 2019).

In this chapter, we draw on a gender-based lens to address the dynamics of social participation in the case of disaster in Minas Gerais, Brazil, caused by the rupture in a tailings dam owned by the company Samarco in November 2015. This is one of the largest socio-environmental tragedies in the Brazil of the 21st century. Because of this event, the Doce River was contaminated with more than 40 million cubic meters of toxic mud, and at least 45 municipalities were directly affected. It is important to point out that although women represent 51% of the population in the region, only 39% of them had their loss and damage recognized formally, and only 31% had access to compensation programs (FGV, 2019). A more recent study showed that, of the total of people affected, men were compensated approximately 10% more than women (AEDAS, 2023).

This scenario prompts an inquiry hypothesis about the consequences of not having a gender-based remediation that considers gender inequalities in the process of planning, implementing, and monitoring recovery measures, including compensation remedies. Nevertheless, it is essential to consider the impacts of not ensuring women's participation both in defining the impacts, which they suffered, and in the design of remedies to recover their territory (FGV, 2019).

Throughout the analysis of affected women's narratives, we suggest that a participatory approach that seeks to diagnose the impacts on rights and remediation in the event of a disaster must have a gender lens to be considered a meaningful stakeholder engagement. This study focuses primarily on engagement with rights-holders as a subset of stakeholders.

The study draws attention to the barriers that women face to meaningfully participate as stakeholders. We argue that despite the relevance of a meaningful engagement approach for different company stakeholders in human rights due diligence, ensuring a gender approach must consider pre-existing vulnerabilities, which will require additional steps.

### **Gender, Disasters, and Women's' Participation**

The UN recognizes that crisis situations tend to aggravate pre-existing inequalities and discriminations, particularly against women who occupy even more marginalized intersections – such as women living below the poverty line, Indigenous women, women belonging to ethnic, racial, religious, and sexual minorities, women with disabilities, refugee and migrant women, internally displaced women, single women, girls, and elderly women. While it is evident that gender-related factors exacerbate the negative impacts of disasters (CEDAW, 2018; UNDRR, 2015), it is crucial to be careful when categorizing women and girls as vulnerable groups. Adopting a strict victimization approach that portrays them solely as fragile victims requiring state protection (MacGregor, 2017) can perpetuate negative gender stereotypes, disregarding the valuable contributions that women's organized action can bring to disaster risk reduction and post-disaster management.

For initiatives to be truly transformative and well-designed, it is essential that all efforts that seek to assess loss and damage and reduce disaster risks refrain from placing women in the framework of "passive victims". Instead, these initiatives should focus on promoting their empowerment and facilitating their active participation in decision-making processes. By doing so, we can create a more inclusive and equitable approach to addressing disaster challenges (CEDAW, 2018). This could happen through consultation with affected women and girls to identify their specific needs and priorities. Additionally, it is essential to implement special assistance measures that address potential barriers to participation. These measures may include providing transportation services and childcare facilities to mitigate challenges related to time constraints, mobility limitations, and safety concerns that could otherwise impede the women's engagement (UNDP, 2014).

According to the interpretative note of the UN Working Group on Business and Human Rights aimed at dealing with access to effective remedy for business-related human rights abuses, in the case of women affected by the activities of companies, women's experiences should be relevant in three interrelated ways: (i) how corporate activities may affect women differently, including by reinforcing or exacerbating existing gender discrimination through the adoption of gender-neutral policies; (ii) what additional barriers women may face in gaining access to effective remedies to redress human rights abuses; and

(iii) what remedial responses women may need to achieve substantive justice in an era in which the private sector is playing a dominant role (UN OHCHR, 2019, p. 10).

As “women” are an extremely heterogeneous group of stakeholders, it is essential that these considerations also take into account these intrinsic differences related to other vulnerabilities and apply recommendations and standards that are intertwined with their other social denominators and operators. For example, in the event of a disaster affecting an indigenous or traditional population, it is essential to combine the guidelines mentioned here with ILO Convention 169.

Companies and states must ensure the active involvement of women’s organizations and collectives throughout the entire assessment process. Their inclusion is essential to ensure that the damage assessment and remediation policies are community-led and responsive to the genuine needs and perspectives of the affected communities (Robles, 2018). Disasters provide a unique opportunity to challenge discriminatory gender norms, especially by actively involving women in leadership positions and integrating their needs and demands into the disaster recovery process. While empowerment activities are crucial in this context, a careful approach is necessary, particularly during emergencies. Rapid changes in gender norms amid such situations may inadvertently exacerbate gender-based sexual and domestic violence. Therefore, ensuring proper empowerment requires thoughtful consideration and comprehensive strategies that address and mitigate these risks, prioritizing the safety and well-being of women throughout the entire process.

### **Gender-responsive Stakeholder Engagement in the Recovery of a Territory Affected by a Disaster**

Stakeholder engagement is a cross-cutting issue described in the UN Guiding Principles for Business and Human Rights (2011) and other key frameworks, such as the OECD Guidance on Due Diligence for Responsible Business Conduct (2018) and Meaningful Stakeholder Engagement in Extractive projects (2017) and the Sendai Framework (2015).

According to the UN Guiding Principles on Business and Human Rights (2011), “meaningful consultation with potentially affected groups and other relevant stakeholders” is a requirement for identifying and assessing the nature, diversity, and magnitude of the actual and potential adverse human rights impacts (UNGP, Principle 18). In this process, companies should pay special attention to any human rights impacts on individuals from groups or populations at heightened risk of vulnerability or marginalization and bear in mind the different risks that gender-based inequality creates (UNGP, Commentary on Principle 18).

The Sendai Framework emphasizes that all risk reduction activities should prioritize empowerment, inclusiveness, accessibility, and non-discriminatory participation. This is especially crucial for individuals disproportionately affected by the negative consequences of disasters, particularly those in vulnerable socioeconomic conditions. To achieve this, considerations of gender, age, disability, and cultural perspectives must be integrated into all policies and practices. Additionally, the framework encourages the promotion of women and youth leadership in disaster risk reduction (UN DRR, 2015).

The OECD Due Diligence Guidance for Responsible Business Conduct defines a company’s stakeholders as “persons or groups with interests that are or could be impacted by an enterprise’s activities” (OECD, 2018). Within this perspective, companies should engage in identifying and assessing adverse human rights risks and impacts, tracking and reporting on

risks and impacts, designing effective grievance mechanisms or providing targeted remediation. In the context of the extractive sector, stakeholder engagement proves effective in identifying and preventing potential adverse impacts of operations as well as appropriately mitigating and remedying any occurrences (OECD, 2018). The OECD's Due Diligence Guidance highlights meaningful stakeholder engagement through four key pillars: i) "two-way" engagement, shifting decision-making from the enterprise to a mutual process involving interested and affected parties; ii) "good faith" engagement, where companies address adverse impacts, and stakeholders honestly represent their interests; iii) responsive engagement, ensuring follow-through on agreed commitments and providing remedies for adverse impacts; and iv) ongoing engagement, emphasizing continuous involvement throughout the operation's lifecycle, rather than a one-off effort (OECD, 2018).

While legislation increasingly requires companies to conduct ongoing human rights due diligence – such as Germany's Supply Chain Due Diligence Act and France's *Loi sur le Devoir de Vigilance* – many still struggle with meaningful stakeholder engagement and, as a result, may miss out on the benefits that it can generate. Systematically integrating stakeholder engagement into due diligence processes can help companies detect potentially negative impacts early on, increase the efficacy of collaborative responses to impact mitigation as well as the potential for grievance mechanisms to identify and address actual and potential harm successfully.

Businesses that wait for negative impacts to become severe before directly engaging with stakeholders risk losing valuable resources needed for firefighting and (re-)building trust. Not engaging with stakeholders in a meaningful way is, therefore, a missed opportunity for robust human rights due diligence processes that have the potential to enhance business resilience through proactive risk management (Global Compact, 2022, p. 5). But what makes stakeholder engagement meaningful for businesses and stakeholders alike?

Thus, the primary objective of stakeholder engagement in the context of human rights due diligence is to ensure that the measures taken by businesses match the actual risks of a development project and the needs of individuals or groups whose rights are adversely impacted by their activities. Stakeholders' engagement is also relevant in remediation in case of adverse impacts and rights abuses. Firstly, as a way of ensuring understanding of adverse impacts and abuses of rights that the population may have suffered. In this case, it is required, for example, that operational-level business mechanisms ensure that victims have access to sources of information, advice, and expertise necessary to initiate a complaint process on equal terms, with full details and respect (UNGP, Principle 31).

Throughout the mentioned steps – risk assessment, monitoring, and eventual remediation – it is important to "leave no one behind" (United Nations, 2015). In order to do this, it is necessary to identify groups and individuals who are in a situation of vulnerability and who historically do not occupy decision-making spaces and do not have their non-universal characteristics considered (United Nations, 2015). As already mentioned, women represent one of these groups, due to historical gender inequalities and discrimination, often multiple and overlapping, that undermine women's prerogatives as rights-holders and increase the impact of human rights violations and abuses.

A gender review of the meaningful stakeholder engagement issue proposes that for a gender-sensitive assessment, it is necessary that "potential gender differences in risk and impacts are taken into account in risk assessment and preparedness (especially early warning systems and means of evacuation) and that direct or systemic sex discrimination is avoided in needs assessments and recovery assistance" (UNDRR, 2013).

## **Methods**

In this chapter, we analyze the monthly editions of the magazine *A Sirene*, conceived as a secondary source of affected women's narratives. *A Sirene* represents a means of communication made by the affected people. The magazine is produced by those affected by the Fundão Dam, with support from the Archdiocese of Mariana as well as the Federal University of Minas Gerais (UFMG) and the Federal University of Ouro Preto (UFOP). Sérgio Papagaio, a resident of Barra Longa (MG), is one of the main figures in the production of the magazine.

For them, the magazine works as an independent media that concentrates on stories, memories, and counter-narratives about the experience of the disaster in their lives. Their main slogan is that the magazine is “made by affected people, to affected people so it [the disaster] will not be forgotten”, and more than 80 published editions were considered for the purposes of this chapter. In this sense, *A Sirene* can be seen not only as a data source but also as a mechanism of local participation of women affected by the disaster since they rely on and trust this space as a way to express their voices.

Another important element, given the subject of this chapter, is the fact that the newspaper focuses on content that highlights women's voices. There have been editions that have featured the stories of affected women. By giving these women a voice, the newspaper has become an important mechanism for recording their feelings, pain, and losses as well as a history of the reparation process from their perspective.

The narrative in *A Sirene* expresses their reality after the disaster. It is important to point out that, during the coding process, we could identify issues related to different vulnerabilities narrated by the people affected, immaterial damages, and problems arising from the reparation process. Another point worth mentioning is how people understand and state their rights.

For this, some general coding rules were established to generate cohesive initial categories (Bardin, 2006; Bryman, 2016; Miles et al., 2018). Firstly, only reports that represent direct quotes from the speeches of women were considered, notably marked by quotation marks and the use of the first person. With this, 647 narratives were identified as being from affected women. Secondly, the categories were designed to express the narrated “fact”, without any prior theoretical frameworks. In this sense, this stage is inspired by grounded theory methods (Bryman, 2016; Langley, 1999). The initial categories are important constructs that will later be added in order to create new meanings (Bardin, 2006; Miles et al., 2018).

## **Discussion**

On 5 November 2015, at approximately 3:30 p.m., the Fundão dam breached, throwing 40 million cubic meters of toxic mud at the Rio Doce River and riverbank communities. This event created a series of instant severe losses and damages for the local population, especially regarding the access to clean water, their right to health, education, life, income, traditional ways of living (FGV, 2021), and also long-term damages that are still being discovered even after nine years, mostly linked to health and environmental rights. The Rio Doce's disaster created an ecosystem of deep social suffering (Milanez et al., 2016; Zhouri et al., 2016).

As discussed before, the negative impacts of disasters are exacerbated by gender-related factors (CEDAW, 2018), and in the case of the Samarco dam failure reparation process, it was no different (FGV, 2019, 2021, 2022). Mainly, women affected express in their own words,

in the newspaper *A Sirene*, that they feel treated differently from men in the context of the remediation process conducted by the mining companies and the Renova Foundation:<sup>1</sup>

The company considers me dependent on my husband, and, for them, I am entitled to receive only 20% of what he receives. I didn't live on a percentage; I had my salary, and it's absurd that I'm not recognized until today. I had a salon at home, I already had the entire structure, and it was the only one in Gesteira. I used to brush, moisturize, relax, cut, everything. That's on my record, but they said they didn't know my story. Not interested, right? Because it was all there. With the mud, more than 30 liters of shampoo, conditioner, hydration product, all new. The company only gave me a bottle of shampoo and a 1-liter cream, three brushes, a chair, and a flat iron. But what's the point? Where will I work? Am I going to invest in a house that is not mine and put people I don't know here? Renova created this idea that women do not work, but, in their own team, there are many more women than men. They did it because they know we are the majority.

(*A Sirene*, ed. 30, September 2018, authors' translation, original text in Portuguese)

After the Samarco/Vale/BHP crime, Rio Doce was wiped out, with everything. So, we hope they take action and act for us. They have their eyes closed to help us. We expect the company also bears all the damage, because we, fishermen, waste pickers, and traditional peoples, are going through a very precarious, tough situation because they ended up with our crap, with everything.

We hope the company takes action because we are not being recognized. We, women of traditional peoples, want to be identified, and the company does not want to pay us (...) They have to pay because all fishermen and collectors are going through a challenging, very precarious situation. Women are not getting the same recognition as men; they are not recognizing women's rights. We want to be identified.

(*A Sirene*, 2018a Ed. 30, authors translation, original text in Portuguese)

In a previous study based on a content analysis of complaints addressed to the Ombudsman, we identified that the disaster governance did not consider the jobs performed by women for compensation, given that most of them performed jobs that were considered a middle activity, such as in the fishery chain, and not an "end activity" concerning the Brazilian Classification of Occupations (FGV, 2019). While damage to the income and livelihood of fishermen due to river contamination was considered, damage to the income and livelihood of the women responsible for weaving fishing nets and cleaning the fish was not considered (FGV, 2019, 2021, 2022). Women across the Rio Doce riverbank also had to overcome these barriers to properly access justice; many remain excluded from these processes (Galeb et al., 2022). In some cases, fisherwomen were registered as washerwomen:

There is no protective policy for the rights of the vulnerable within the patriarchal structure in which we live. They do not place the woman as financially responsible. I feel fragile in this repair process. Gender discrimination was even present in the first registrations with fisherwomen here in the State of Espírito Santo. The fisherwomen were identified as washerwomen, which was my case; it came on my form. According to Renova's damage matrix, women who owned vessels were classified as crew members, which led to a significant reduction in indemnity amounts. There is still a struggle for the recognition of fishing women who cleaned, cut, froze, and sold the fish (...)

(*A Sirene*, 2020 Ed. 51, authors translation, original text in Portuguese).



Other jobs culturally attributed to women are part of the small-scale economic activities carried out informally and at home, such as sewing, handicrafts, and subsistence agriculture (FGV, 2019). Although these sectors constitute an essential source of employment, income, and survival for women, and an important piece of invisible work that makes society function, they are informal activities that impose direct barriers to recognize their existence. The washerwomen category, for example, was only recognized during the judicial proceedings as the plaintiffs claimed this breach in the company's original loss and damage assessment (FGV, 2021).

Most of the times, complaints in the ombudsman made by women referred to an increase of the workload with childcare, healthcare, and household chores, the non-recognition of them as affected people (and as workers with activities linked to the river), the lack of participation, cases of violence and vulnerability, and problems related to mental and physical health (FGV, 2019; Gabel et al., 2022).

Moreover, another study identified the failure to consider a gender perspective, and the consequent inability to recognize women's rights even caused harm, such as increased domestic violence statistics. Domestic violence increased eight times more in affected than in non-affected communities (FGV, 2021).

Despite, and mainly because of, this scenario, women have never stopped raising their voices. In seven editions of *A Sirene*, there was a specific chapter on the issue of discrimination and the non-recognition of the rights of women affected by the disaster (Table 20.1):

In general, these narratives expose two issues: (i) barriers to recognizing the harm suffered by the affected women, especially those related to their profession; (ii) barriers to women's participation in meetings on remediation of damages caused by the companies involved. Considering the narratives, it is possible to conclude that there is a precedence of (ii) above (i), which means that the non-participation of women during meetings played a pivotal role in generating a flawed and insufficient identification of the disaster's damages.

The first case (i) is related for example, with the fact that in fishing, women generally perform functions related to building fishing nets or cleaning fish, which are not expressly recognized in the Brazilian Classification of Occupations.<sup>2</sup> To the extent that the reparation program considers this standard without taking into account how roles are divided between men and women in traditional fishing, activities usually performed by women are no longer valued and considered for compensation purposes. In the second case (ii), since women generally take care of activities aimed at maintaining the home and caring for the family, it will be more difficult for them to participate in meetings aimed at discussing repairs and compensation due, depending on the time and on how far from their home such meetings take place. Being able to attend these meetings could be a way of dealing, for example, with the need to recognize the activities carried out by women in fishing in the example considered, and if this does not happen, the application of the Brazilian Classification of Occupations, which does not recognize many intermediate activities of different professions, will be employed, and the woman's role will be made invisible for the purposes of reparation and compensation.

Excluding women from interviews hindered a comprehensive understanding of the specific needs and realities faced by half of the affected population. Consequently, the gaps in women's participation reinforced the non-recognition of the damages suffered by them.

Men, "heads of the family", as the Renova Foundation categorizes them, were interviewed to register the damages suffered, accounting for the family's losses. As pointed out in previous studies, this is one of the reasons why the specificities of the harm suffered by women are not identified. Moreover, it reinforces the non-recognition of the profession performed by women,

*Table 20.1* Articles from the magazine *A Sirene* with a specific focus on the abuses suffered by women due to the Samarco disaster

<i>Edition Number</i>	<i>Date</i>	<i>Title</i>	<i>Subject</i>	<i>Page</i>
<b>08</b>	November 2016	“From Despair to Revolt: The Militancy Life of a Fisherwoman and a Health Agent”	Non-recognition of fisherwoman work for compensation purposes and barriers to access to information and justice (lack of knowledge about the rights of those affected).	13
<b>15</b>	June 2017	“Women in Struggle”	Loss of work, “invisibility”, disqualification, silencing in deliberative spaces, non-recognition as affected by the company, loss of community and family ties, and increased conflicts and violence.	10/11
<b>29</b>	August 2018	“Returning Home Alone”	Barriers to women’s participation in demonstrations and meetings related to repairing the damage caused by the disaster: fear of going back alone late at night, high transport costs (since meetings are not held close to temporary housing), and lack of support for women with infants and the elderly.	13
<b>30</b>	September 2018	“Not Recognized”	Non-recognition of work performed by women, non-recognition of women as affected by the disaster, non-recognition of losses suffered in addition to work and payment of temporary benefit to the male “head of household” (100%) and the woman as “dependent” (20%).	08
<b>36</b>	March 2019	“Being a Woman is a Struggle”	With reference to International Women’s Day (March 8), the article brings testimonials from affected women, with speeches about the challenges for participating in meetings and for access to remediation of the damage caused by the disaster.	08/11
<b>40</b>	July 2019	“Let’s Scream Louder”	The article deals with the obstacles to women’s participation in meetings related to the remediation of damage caused by the disaster, pointing out testimonies related to the exclusion, silencing, and discrediting of affected women, including black women.	06/07
<b>51</b>	July 2020	“Profession Marked on the Body: the Life of a Fisherwoman Affected by the Mining Disaster”	The article deals with obstacles to recognizing the losses suffered by women affected by the mining disaster, especially those related to fishing, as well as obstacles regarding participating in related meetings on remediation.	12/13

significantly when this work is associated with the fishing chain; It also contributes to increasing inequality between men and women, since either the emergency benefit and compensation are attributed only to the man, or the woman receives a percentage (generally 20%) of the value attributed to the man, regardless of his work and his income before the disaster. And this, in turn, was identified as one of the causes of the increase in domestic violence in the affected region, as we concluded in another study (FGV, 2019, 2021, 2022).

Testimonies in the articles “From Despair to Revolt: the Militancy Life of a Fisherwoman and a Health Agent” and “Not Recognized” from *A Sirene*, from November 2018 and November 2019, respectively, are examples of this phenomenon:

In addition to committing a crime that caused environmental, social, and cultural damage, Samarco adopts a sexist attitude towards the women affected. The benefit aimed at fishermen is paid mainly to men. The company claims it is aimed at the heads of families, but many women worked alongside their husbands. Some women are heads of households, not just men.

(*A Sirene*, 2016, p. 13, authors translation, original text in Portuguese)

Specifically regarding ‘participation’, the narratives analyzed deal with three aspects: a. exclusion, that is, when women’s right to speak at the meetings is not recognized; b. the discrediting of women’s speech, regarding situations in which women report having their speech discredited or considered inferior to men in the meetings; c. the non-recognition of specificities of the harm suffered by women, including specificities of black women, either because gender representation is not ensured, considering all the intersectionality involved, or because the necessary support, such as to attend to the specific needs of women with children and elderly women, is not offered.

Although these three situations are related and can occur simultaneously, understanding their meaning is essential to define strategies that can effectively ensure women’s right to participate in decisions involving the remediation of damage caused by a disaster.

### **Gender Exclusion**

Data show that exclusion is associated with misinformation. As stated in an article from August 2021 (Edition 64 – August 2021 – *A Sirene*, p. 5), it was intended, with the foundation of *A Sirene*, to enable the existence of “a counterpoint to the countless disinformation and untruths that circulated about the crime committed by Samarco/Vale/BHP (...)” With this, it was not intended to find a newspaper for the affected communities, but with them, from (as) and that, in fact, it was theirs, as long as they so wished.

This is present in the article “From Despair to Revolt: The Militancy Life of a Fisherwoman and a Health Agent”, when the health agent reports on the role she came to play in bringing information to those affected about existing compensation programs, as well as in the article “Profession Marked on the Body”, from July 2020:

The lack of information about the extent of contamination and what policies should be adopted, about my daily habits, directly reflects on the health situation I experience. I am in contact with the affected environment. There is contamination of the fish, consequently, a crisis in our food security. The most serious thing: I have no alternative livelihood option to fishing. Meanwhile, basic information is missing: Can I fish?

Can I eat fish? Can I swim in the water? Can I filter and consume tap water? The absence of a competent communication and dialogue policy implies not only my lack of information regarding the remediation process.

(A Sirene, 2020, p. 13, authors translation, original text in Portuguese)

In the article “Being a Woman is a Struggle”, one of the testimonies reports that part of her work with the community has become to provide information on the quality of contaminated water, on existing indemnity programs, and on the performance of the institutions of justice in the case:

My routine has become more intense. I always receive demands from affected people who want to know how to claim their rights, in addition to checking information released by the press about the case.

(A Sirene, 2016, p. 13, authors translation, original text in Portuguese)

A second aspect of exclusion is not guaranteeing women the right to speak out in meetings held to address the reconstruction of the territory and remedy the damage caused by the disaster. In the article “Let’s Scream Louder”, from July 2019 (A Sirene, 2019), there are testimonies that point to this issue:

At the last meeting, I wanted to speak, I even wrote on paper what it was, but they wouldn’t let me. They didn’t say why, just that it was at the end of the meeting. Other people always talk. Just like my nephew, everything he has to say, he says. It’s no use, no one says no; everything he has, he says. And they confirm that he is in his right.

(...)

We need a voice at the Renova meeting. You ask for the word, and they don’t give it to you. If I don’t have the right to speak, I won’t. There was a seminar only for women, we managed to speak there because there was no Renova.

(...)

My whole life they tried to silence me, and I really believed that I couldn’t be anyone, that I couldn’t have the right to speak, that we, as black women, have to be thrown to the side and that this is normal.

(A Sirene, 2019, p. 7, authors translation, original text in Portuguese)

### **The Discrediting of Women**

The discrediting of women’s words generates a feeling that their manifestation and perspective are worth less than that of men and that others do not understand their statement as credible. Some examples of this feeling are discussed in the reports of women in the articles, from June 2017 (A Sirene, 2017) and July 2019 (A Sirene, 2019):

Prejudice against women is still great. They think we don’t understand things. They think we are more delicate, that we don’t have the strength to fight. In my case, it’s quite the opposite. I fight all the time. I reconcile my time with service, classes, and meeting those affected. I’m from the Commission for the Affected of Bento Rodrigues. I promote dialogue between the community and Samarco. In addition, I work as a dental assistant and attend law school. After the breakup, aged 32, I wanted to go back

to study. I get home from work and go to class. I haven't had time to wash my hair for a few days now, but I'm not giving up on university. The course will help me understand our rights and duties. If the woman knew the strength she has, things would be different.

(...)

Once, during a mobilization act in Acaiaca, I was told to get a hoe and weed. I replied that it was precisely what I would like to be doing, but that Samarco took that away from me. When we resolve our situation here, I want to help those affected elsewhere.

(A Sirene, 2017, p. 11, authors translation, original text in Portuguese)

When we started a speech, they looked: "Wow, does this woman know all this?", they doubted a little about the capacity of us women. And, even today, when I pick up a microphone and want to make a few lines, I notice that the audience looks at us with faces and mouths; I don't know what's going through their heads. It's different when a man speaks and when we take a stand.

(A Sirene, 2019, pp. 6–8, authors translation, original text in Portuguese)

### **Failure to Recognize Specific Conditions for Women's Participation**

There is a finding present both in other studies related to the Samarco disaster (e.g., FGV, 2019, 2021; Galleb et al., 2022) and in the narratives from *A Sirene* that one of the consequences of the disaster for women was to reinforce the existing overload concerning home activities. With the disaster, women accumulated the activities they perform at home with activities related to work and subsistence and family care, given that there are several reports of physical and mental illness, especially among the elderly, and that they need to fetch water from distant places, given the contamination caused by the rupture of the dam. In this context, the participation in meetings to discuss the remediation of the damage caused and the reconstruction of the territory is perceived as yet another burden, given that there is even an incredible feeling of dissatisfaction about the effectiveness of these meetings.

In this context, it is crucial to recognize, in the first place, that the disaster caused or reinforced the overload of tasks for women, so meetings need to be effective and take place at a home and time that makes it possible for the women to attend.

Several reports address the challenge for women to be able to attend these meetings: (i) either because there are many of them, and they are ineffective; (ii) or because they take place in a place far from their homes or temporary housings; (iii) or because they extend into the night so that women are afraid to return to their homes alone.

Some testimonies present in the article "Not Recognized", from August 2018 (*A Sirene*, 2018b), are examples of this phenomenon:

Dividing between struggle, work, and family, the women affected took on a leading role in defending the rights of their communities. When they succeed, they participate in an intense routine of meetings, from Monday to Friday, and often on weekends. However, these meetings usually end late at night and take place in places far from their temporary homes in Mariana. Because of the fear of having to go home alone and considering other difficulties, such as the elderly, mothers with children in arms, and also those

who need to pay the cost of tickets, the women understand the need for availability of transport within the city that allows a presence in all attractive debate spaces to those affected.

(...)

I'm afraid of walking around Mariana alone at night and of waiting at an empty bus stop. When the meeting is at the Commission's office, for example, I come back at a gallop, talking to God. It's also hard to pay for the ticket with my own money. I like to be present at all the meetings, but I live far away. With transport it would be easier, more people would go, and without having to leave early because of the time. They [Renova/Samarco] could organize themselves about this.

(*A Sirene*, 2018b, p. 13, authors translation, original text in Portuguese)

Furthermore, it is necessary to recognize that it would be essential to meet the specific needs of some women, as some need to carry their children or are elderly.

Narratives show that the barriers to ensuring women's participation are built on discriminatory gender patterns that reinforce the non-recognition of the damages suffered by the affected women. In the case of Samarco's mining dam disaster, women are constantly turned "invisible", excluded from decision-making, and lacking access to remedies and compensation measures.

In this perspective, many of the barriers women face when accessing participatory mechanisms result from formal and informal rules that push them away or deny them the space and the power over their voices. As paradoxical as it may be, it is essential to consider women's participation so as not to leave them behind. However, care must be taken to ensure they are included throughout the participation process.

As women denounced in *A Sirene*, their lack of participation and needs were systematically overlooked and taken for granted. The companies and other authorities did not hear their voices, but the women still made them echo to expose all of the human rights abuses which they have suffered.

Gender differences in risk and impacts were not taken into account in risk assessment and preparedness before the disaster occurred, and, after it, the companies and the authorities did not make enough effort to develop an assessments and recovery system without direct or systemic sex discrimination, as we see in the testimonials.

A gender-responsive approach to disaster assessment and remediation must not be seen only as a goal but mainly as a process that has to be actively promoted by states and businesses involved in these scenarios.

## **Conclusion**

While international human rights guidelines emphasize the obligations of companies to engage stakeholders, the absence of a widely accepted legal and policy framework for consulting on resource extraction projects (including their decommissioning or accidental 'disaster' phases) at national or subnational levels can pose challenges to the success of a company's stakeholder engagement efforts.

By analyzing more than 600 narratives shared by women affected by the Samarco disaster, this chapter brings to light the hurdles hindering the recognition of these women's negative impacts, particularly those tied to their professions. Furthermore, it illuminates how these

barriers are intricately linked to a significant void in women's involvement in the formal meetings of the remediation process. The research reveals key findings concerning women's limited participation in disaster decision-making. These findings encompass instances of misinformation and exclusion from negotiation forums, the curtailment of women's right to express their opinions during meetings, undermining women's voices, and failure to create suitable and tailored conditions to foster women's active engagement.

As previously mentioned, the Sendai Framework stipulates that the reconstruction of a territory affected by a disaster should avoid being rooted in or perpetuating the errors and circumstances that led to the disaster, understood as the result of an event harmful to local susceptibilities and vulnerabilities. For this, an empowered and inclusive approach was assumed as a condition for a "build back and better"<sup>3</sup> strategy aimed at disaster reduction.

Specifically, in disasters caused by companies, meaningful stakeholder engagement assumes particular relevance in view of the responsibility of remedying the damage caused to consider the centrality of the victim. This which requires remedial mechanisms that should be responsive to the diverse experiences and expectations of stakeholders.

Accordingly, if a gender lens is not applied to impact assessment, and if the affected women are not meaningfully and directly involved in informed consultation processes, both states and businesses may be unable to capture the unique adverse impacts of business activities on women. Women may also face additional barriers in gaining access to justice generally and specifically in relation to corporate human rights abuses because of discriminatory laws, gendered roles, economic marginalization, social stigma, power imbalances, religious values, and cultural norms (UN Committee on the Elimination of Discrimination against Women, 2015). Even if women do have access to remedial mechanisms, the dispute resolution process may lack gender sensitivity, or compensation awarded may not reach them because of patriarchal social structures (Miller-Dawkins and Marshall, 2016).

There is an opportunity for companies to adopt a more comprehensive and rights-based approach to stakeholder engagement. This approach should be integrated into human rights due diligence and necessitates planning, the allocation of adequate resources, and a long-term commitment. It should promote dialogue and facilitate meaningful and inclusive social participation, especially during the design and implementation of gender assessments, as well as the development of gender-responsive strategies and action plans.

## Notes

- 1 The Renova Foundation is a private, non-profit, non-governmental organization. It was established on March 2, 2016, through a Transaction and Conduct Adjustment Agreement (TTAC), an agreement signed between federal, state, and municipal bodies and the Brazilian Companies (Vale, Samarco and BHP Brasil). The Foundation is responsible for carrying out reparation and compensation for all the socioeconomic and environmental damages caused by the disaster as established in the agreement.
- 2 The Brazilian Classification of Occupations is a normative and descriptive classification standard for economic and professional activities determined by the National Classification Commission for use by government bodies for census purposes and access to benefits and tax taxation. The current version of the CBO, the second version of the document that was created in 1994, is dated October 9, 2002.
- 3 Build Back Better (BBB) means "the use of the recovery, rehabilitation, and reconstruction phases after a disaster to increase the resilience of nations and communities through integrating disaster risk reduction measures into the restoration of physical infrastructure and societal systems and into the revitalization of livelihoods, economies, and the environment" (UN, 2015, p. 6).

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# WIND POWER, MINING, AND STAKEHOLDER ENGAGEMENT IN FINLAND

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## Introduction

There is an urgent need to decarbonize our energy systems to mitigate the impact of climate change. The planet is experiencing significant and far-reaching impacts from the changing climate. Renewable energy is an important tool for climate change mitigation, and the energy industry is a vital player in the transition away from fossil fuels. Wind power can be an important piece of this puzzle, but can impact land-use practices, the surrounding environment, biodiversity, and local communities, both directly and indirectly through the other impacts. This chapter explores meaningful stakeholder engagement from the broader perspective of local communities; including Indigenous and non-Indigenous peoples affected by development projects. There is extensive literature on engaging with Aboriginal and Indigenous communities (Hanna et al., 2014; Vanclay et al., 2015; Ruwhiu and Carter, 2016; Udofia et al., 2017), which is an important consideration, but it is also important to consider local affected communities more broadly and provide insights on context dependent solutions for engaging stakeholders meaningfully (Buhmann et al., 2024).

As land-based space and resources are becoming fully exhausted, the interest in developing marine-based industries is seeing unprecedented growth (Jouffray et al., 2020). Offshore wind is one such marine industry experiencing this phenomenon. Globally, 21 GW of offshore wind was installed in 2021, a record-breaking year and three times more than in 2020 (Global Wind Energy, 2022). Europe (including the United Kingdom) and China are leaders in offshore wind development, with Europe having installed approximately half of the global total installed capacity of 56GW (Global Wind Energy, 2022). The European Union (EU) has announced ambitious plans to increase offshore wind capacity to 30 GW by 2030, and 300 GW by 2050 (European Parliament, 2022), an increase from the current 16 GW in the EU-27.

Within the EU, Finland is a leader in renewable energy production, second only to Sweden. Renewable energy comprises slightly over 40% of Finnish energy supply, nuclear energy accounts for 20% and fossil fuels for approximately 33% (Statistics Finland, 2022). Wind power comprises approximately 3% of energy consumption and most of this is onshore. The capacity of offshore wind is approximately 70.7 MW, and this is expected to grow. Development

projects are underway that are expected to increase the capacity by 2.7 GW (Finnish Wind Power, 2021). A 2 GW capacity offshore wind park, expected to be operational in the early 2030s, is underway in Korsnäs, along Finland's west coast (Vattenfall, 2023). Additionally, five tendering processes are being launched in 2023 and 2024, of over 6,000 MW of offshore wind power, in Finland's territorial waters (Metsähallitus, 2023). The demand for offshore wind is rapidly increasing, and it has the potential to become a major source of renewable energy, if it can be developed sustainably in line with other marine uses (Metsähallitus, 2020). As wind turbines are predominantly built of metals (Jensen, 2019) and offshore wind farms require more copper than onshore wind farms (Trilogy Metals, 2020), mining becomes central in the increasing production of offshore wind energy. Thus, examining the production of wind power and mining simultaneously provides a broader aspect of the green energy transition and meaningful stakeholder engagement.

Offshore wind development has several challenges that must be overcome. Notably, it can impact the surrounding environment and biodiversity, including increased underwater noise, potential collisions for birds and bats, potential habitat loss, and displacement of marine mammals, birds and other marine life (Hüffmeier & Goldberg, 2019; Soares-Ramos et al., 2020). Turbines can increase noise and visual pollution for surrounding communities, leading to potential impacts on livelihoods, recreation, and cultural activities (Haggett, 2008). Effective engagement with affected stakeholders, for example those living in communities whose livelihoods or recreational spaces are changed as a result, can be one tool for understanding and mitigating the social and environmental impacts of offshore wind development (Walker & Baxter, 2017). Furthermore, consultative, and participatory marine spatial planning can aid in managing and mapping the competing and conflicting uses of marine space and seeks to balance economic development with environmental and social protection (Chen et al., 2015; Lester et al., 2018; Schaefer & Barale, 2011; Schillings et al., 2012; Schupp et al., 2021a). Marine spatial plans are most effective when developed with extensive stakeholder participation, including industrial and recreational fisheries, recreational users, marine scientists, local coastal communities, policymakers and other relevant stakeholders, that analyses the cross-impacts of different industries on the sustainable development of marine areas (Virtanen et al., 2022). Expert stakeholder planning is a key feature of effective marine spatial planning as this deepens understanding of the technical and specific details of development projects, including offshore wind. When combined with knowledge from local communities and site- and location-specific information, marine spatial plans can be effective at managing environmental and social impacts.

There is mounting pressure for nations to do *something* about the urgent threat of climate change. Offshore wind power can be an important and critical element for the green transition and aid in attaining renewable energy and climate targets at the national Finnish and EU levels. While offshore wind has the potential to become a major source of energy it should not come at the expense of a just and socially and environmentally sustainable transition. This is a typical example of a “green-green dilemma”: producing green and renewable energy at the potential cost of environmental and social impacts where stakeholders have opposing views on the priority of which is more important (Straka et al., 2020). Research has long shown the importance of engaging stakeholders in the decision-making process to be critical for balanced decision-making (Tauxe, 1995; Webler et al., 1995). Additionally, the production of wind energy in the Indigenous land Sápmi has been criticized for violating the rights of the Sámi, appearing as green colonialism (Fjellheim, 2022). Collaboration between groups and engaging stakeholders in the decision-making and development of offshore wind power can promote a socially sustainable transition and aid in understanding and mitigating the

environmental and social impacts. Stakeholder engagement has been shown to promote more socially sustainable projects and increase public acceptability of wind power projects (Bowen et al., 2010; Firestone et al., 2020; O’Keeffe & Haggett, 2012). There is a substantial body of literature that reveals the importance of trust for socially sound projects (Fraser, 2021; Gross & Magar, 2016; Hall et al., 2013; Heikkinen et al., 2016). Effectively engaging affected stakeholders in a meaningful way has the potential of promoting trust in the development process (Firestone et al., 2020; Hall et al., 2013), of bolstering public acceptability for large-scale projects, which is a key driver of offshore wind development (Jenkins et al., 2022; Snyder & Kaiser, 2009), and of ensuring socially sound projects that identify, understand, and mitigate adverse environmental and social impacts. Furthermore, ensuring in-depth consultation and open dialogue between affected stakeholders and developers is a crucial element in obtaining local acceptance and trust (Suškevičs et al., 2019; Walker & Baxter, 2017). The EU’s strategy for sustainable development of offshore wind emphasized the need for stakeholder, industry, and community engagement and discussion (European Parliament, 2022). Involving local and Indigenous communities in the development and communication process can be an invaluable source of knowledge and experience for understanding and mitigating the environmental and social impacts of development projects.

Offshore wind could become an important and domestic clean energy source for Finland if developed sustainably. However, the rapid upscaling could result in potential issues in the future. Offshore wind is a relatively new industry in Finland, but guidance and insights can be taken from more established industries, such as mining, that have historically struggled with meaningful stakeholder engagement (Heikkinen et al., 2016). Understanding how to effectively engage affected stakeholders is of critical importance to the successful upscaling of offshore wind. Furthermore, it is important to ensure best practices for effective stakeholder engagement are adopted in the early development stages to ensure socially and environmentally sustainable projects and promote positive public attitudes toward large-scale wind development projects.

The aim of this chapter is to provide insights and guidance on how to meaningfully engage stakeholders in the development of offshore wind power. We synthesize results from two research projects combining the experience and expertise of affected and expert stakeholders. The two participatory stakeholder studies explored: 1) the sustainable development of offshore wind power with expert stakeholders; and 2) citizen perspectives of mining activities, both in Finland. We reveal and present insights on how to engage stakeholders, both affected and expert stakeholders, in large-scale offshore wind development projects. Additionally, we discuss the implications and impact of ineffective stakeholder engagement on local communities. As described in the introductory chapter, risk-based due diligence refers to analysing and managing a project’s risks and negative consequences to the affected stakeholders (Buhmann et al., 2024). We aim to examine the implementation of risk-based due diligence from the perspective of the local people and from the national level perspective.

Results suggest there are several elements to meaningful stakeholder engagement that can be applied generally to promote socially sustainable projects. These can be further categorized into local approaches and national interventions. Local approaches are those that directly involve the affected stakeholders. National interventions are those processes, procedures, and policies that aim to promote meaningful stakeholder engagement. By exploring these two different approaches to MSE, we provide a holistic overview of effectively engaging stakeholders and the potential limitations, bottlenecks, and improvements in the governmental and technical processes.

## **Legal Requirements for Stakeholder Engagement in Finland**

The aim of the Act on Environmental Impact Assessment Procedure (252/2017) is to assess the environmental impacts and provide information and opportunities for participation in planning and decision-making of a project – such as opening a mine or constructing a wind farm, both onshore and offshore. Opportunities for participation in the process is referred to in the Act in Section 2, definition 7, in the following way: participatory interaction during environmental impact assessment between the project manager, the contact authority and other authorities, those whose conditions or interests may be affected by the project as well as associations and foundations whose field of activity may be affected by the consequences of the project (Act on Environmental Impact Assessment Procedure 252/2017).

The procedure of the environmental impact assessment (EIA) includes a program for environmental impact assessment and an environmental impact statement. Both are subjected to public hearings, which last typically 30 days, but can be extended to 60 days for special reasons. Statements and opinions need to be submitted to the contact authority during the hearing period. The contact authority is responsible for preparing the public announcements and ensuring that necessary statements are requested. The Act defines the projects that are always obligated to EIA procedures. To some extent, both wind power and mining projects can be carried out without subjection to environmental impact assessments. The Act decrees that EIA must be conducted when the wind power plant project has at least ten individual power plants, or total capacity of at least 45 MW. Additionally, if the area of a planned mine is over twenty-five hectares or the total amount of removed material exceeds 550,000 tonnes per year, the project is subject to the Act (Act on Environmental Impact Assessment Procedure, 252/2017). However, larger projects are subjected to EIA procedure.

### **Methods**

We used an exploratory, qualitative research design to identify and examine the elements of meaningful stakeholder engagement in two case studies in offshore wind power and mining in Finland. In the first research project exploring the sustainable development of offshore wind, four expert workshops were organized to co-create and gather expert knowledge on the state of the offshore wind industry. This knowledge included the socio-economic and technical drivers of development, how the industry might evolve and what role it could play in Finland's broader energy mix, the current trends that may impact development, and the *status quo* of offshore wind in Finland. In the second research project identifying citizen perspectives of mining, eight stakeholder interviews were conducted in Kolari, the area surrounding the planned Hannukainen mine in Finland.

The first two expert workshops were held virtually in January and June 2021, and the final two were held physically in Helsinki and Turku, Finland, in February 2023. We used an expert stakeholder approach to co-create and gather expert knowledge and experience from a broad range of stakeholders interested in energy and sustainability issues. We used a participatory, expert method with a representative group of expert stakeholders to ascertain a broad and diverse range of information, emerging issues, and potential consequences. We decided to use workshops, as opposed to other methods such as focus groups, as workshops allowed for exploratory discussions in which the participants were free to discuss and co-create ideas, rather than following a predetermined set of questions. Collaboration with a diverse group of stakeholders and experts affects each directly and produces better outcomes than working alone (Austin & Seitanidi, 2012).

Across the four workshops, there were altogether 40 committed participants: 13 in the first workshop, 10 in the second, 7 in the third and 10 in the final. The participants represented a broad range of stakeholder groups, including representatives from regional administrations and marine spatial planners, lobbying groups, industry representatives and entrepreneurs, researchers, nature conservation and non-government organizations, landowners, union groups, and think-tank representatives.

Each workshop was organized with the same general structure. They started with a round of presentations introducing the project, preliminary material, and the aims of the workshop. The participants then split into smaller groups and began discussing the topic of the workshop. Each group had a facilitator to support the discussions as necessary and provide any technical help. The discussions were recorded either on an online canvas or with sticky notes on a paper canvas in the physical workshops. Proceeding the smaller group discussions, the participants returned to the main group, and each shared some key points and results from their discussions and commented on each other's points.

The workshops were organized to explore the sustainable development of offshore wind in Finland. The first workshop identified the drivers of development and extended these under different global narratives to create scenario narratives exploring the potential development (Jenkins et al., 2022). The second workshop identified weak signals and developed 'wild card' events that could dramatically alter the development of offshore wind (Jenkins et al., 2023). The third and final workshop developed a shared vision for the future state of offshore wind and identified policies, practices, investments, and actions needed to reach this desired goal. The workshops were not directly related to stakeholder engagement, but this was a topic raised frequently by the participants, particularly in the final workshops. Consequently, insights and guidance on effective and meaningful stakeholder engagement were discussed and are presented in this chapter.

The studied iron ore mine is in Hannukainen, in the municipality of Kolari, north-west Finland. The villages of Kolari are inhabited by approximately 4000 residents. Although the village of Kolari has the highest population rate, with 1070 residents in 2021 (Statistics Finland, 2021), the fell villages Äkäslompolo and Ylläs have the highest rate of population growth (Municipality of Kolari, 2023). Since the first announcements of the reopening of Hannukainen mine, the plans have been actively opposed by stakeholder groups such as the residents of fell villages, tourist entrepreneurs, and reindeer herders. Generally, the mine has support in the village of Kolari, which is located approximately 30 kilometres from the mining site. However, the residents of the fell villages, located around seven kilometres from the mine, express opposition against the mining plans. The opposing residents have actively halted the permitting process. The mining permit was dismissed as illegitimate by the Administrative Court of Northern Finland in 2020 for not taking into consideration possible harm to local livelihoods and nature values to protect the benefits of private and public sectors (Tynkkynen, 2020). Hannukainen mine's zoning plan was accepted by the municipal council in 2021, but an appeal was filed by locals. At the time of writing, the decision is being re-evaluated by the Administrative Court of Northern Finland. Additionally, an environmental permit for the mining project has not been obtained, as the EIA authority has returned the assessment report back to the mining company.

The data of the Hannukainen mining case consists of eight interviews conducted in Kolari in February 2021. Originally, the interviews were conducted as part of a research project regarding the implementation of environmental and employment UN Sustainable Development Goals (SDG) from the perspective of local key stakeholders (Kurkinen, 2023).

The Hannukainen mining plans function as a case example of local peoples' experiences of insufficient stakeholder engagement.

The interviewees represented local key stakeholders: residents, tourist entrepreneurs and employees, the chair of municipality, and a local reindeer host. The interviews lasted between 45 minutes and 1.5 hours and were recorded with the permission of the participants. The tapes were transcribed in written form proceeding the interviews. The transcriptions were systematically coded with ATLAS.ti 22, a software for analysing qualitative data. The aim was to search for repetitive patterns and themes from the data by utilizing Braun and Clarke (2006) guidelines for Inductive Thematic Analysis (TA). Choosing TA as an analytical method enabled engagement with the data constructively while staying open to various possible viewpoints and dismissing previous assumptions of the subject. TA enabled the grounding of the constructing concepts and themes strongly to the data instead of researcher's previous assumptions.

## **Results**

While the results presented in this chapter stem from two research studies focusing on different industrial development projects, it is possible to identify common themes and elements on how to adopt best practices for meaningful stakeholder engagement. These can be categorized further into local- and national-level approaches. Local-level approaches are those practices that directly involve affected stakeholders in the development project; honest and open communication, accessibility of information and opportunities for affected stakeholders to voice their concerns, protests, wishes and feedback. National-level interventions indirectly involve local and affected stakeholders and are those practices and policies that *should* ensure meaningful stakeholder engagement with governmental and technical processes, but often-times affected stakeholders express that there is a disconnect between what happens in practice, and what the processes aim to achieve. We seek to identify potential bottlenecks, improvements, and limitations in these processes.

### ***Local-Level Approaches to Meaningful Stakeholder Engagement***

The results suggest that local-level meaningful stakeholder engagement comprises at least two important aspects: 1) adequate capacity to impact the development process; and 2) honest and transparent communication and accessibility of information.

Adequate capacity to impact refers to the ability for affected stakeholders to impact the decision-making process and have their concerns, feedback, protests, and wishes heard and mitigated during the development project. This ability should be available from the beginning of the development process, through construction, operation, and decommissioning. Results suggest that the participants expressed inability to impact the decisions regarding different phases of planning and permitting process. It was revealed that affected stakeholders had no chance to make statements regarding some of the mining-related decisions that impact the surrounding communities. One respondent noted that "there was no possibility of making a statement about the (zoning) decision." Furthermore, one key affected stakeholder group, leisure property owners near the open pit, were excluded from the permitting and appealing process, which was one of the reasons the decision to grant a mining concession issued by Finnish Safety and Chemical Agency in 2017 was overturned by the Administrative Court of Northern Finland in 2020 and returned for further consideration. Moreover, tensions have arisen between affected stakeholders and the mining company due to concerns over impacts to livelihoods

with little to no understanding or mitigation of their concerns. Consequently, respondents expressed doubt and a lack of trust in the broader development and judicial process.

Local communities expressed exhaustion at the process. There is a feeling that local people have no power to impact the decisions, particularly without expert or scientific evidence. One interviewee responded:

only if you know how to write law, or you can prove something scientifically, can it have an impact. I believe strongly in democracy, but in this case, I've experienced a great shock that in these kinds of situations, democracy does not in fact happen.

To account for the opinions of affected stakeholders, the planning process of developing a project should allow for two-way communication and ensure that affected stakeholders are heard during the communication process, rather than it simply being about the company sharing information in a one-way process.

The second important local elements for meaningful stakeholder engagement are proactive, transparent communication and easily accessible information on the development process. The mining company was criticized for its lack of interaction with opposing affected stakeholders such as reindeer herders, tourism entrepreneurs, and other local communities. Respondents expressed that the mining company is not willing to communicate with opposing stakeholders and is conducting public relations only in the village where the mining plans are generally supported. Furthermore, difficulty reaching the mining company was evident. One respondent stated that the mining company had repeatedly ignored their attempts to contact the company.

Overall, lack of information and transparency regarding the mining plans from the mining company is apparent. The data reveals the need for independent information about the situation of the development project plans. The respondents described that the mining company is publishing propaganda, while the municipality, a decision-making authority regarding zoning plans, is announcing information seldomly, if at all. The respondents expressed that independent and objective information is not shared with stakeholders. Additionally, a few respondents emphasized that their first source for information is the news. There is a need for an objective and active platform for updating information. Respondents stated that the responsibility of seeking information regarding the project is on the shoulders of the affected stakeholders, while at the same time some of the respondents did not know from where to get the information in the first place, as described in the following excerpt.

I sometimes wonder, where are the mining plans going now. There is so much obscurity in the communication. I wish that there was regular reporting, even if nothing is happening. Like, I know nothing now either. Why do we get to know everything after it has already been decided? Suddenly, the municipality announces that something has been decided. And then the municipality is like "it was there, on the wall of the town hall, you could have gone to have a look at it."

Respondents brought up that the mining company had published false information regarding the employment and environmental impacts of the mine. According to the interviewees, the positive effects on employment had been exaggerated while the negative impacts on the environment had been underestimated or ignored. A tourism entrepreneur described: "The foundation pillars of a constitutional state are sufficient communication and precautionary



principle. These are not actualising. [...] People have the right to know about the issues that affect their livelihoods and environment.” Publishing false information (Valtavaara, 2018) and the mining company’s attempt to conceal some of the documents regarding the supplement of the environmental permit application deepens the distrust towards the mining company and contact authorities and creates lack of belief in democratic processes.

### ***National Interventions Aiming to Achieve Meaningful Stakeholder Engagement***

National interventions can be important for ensuring and promoting meaningful stakeholder engagement. There are policies and legislations in Finland in place that aim to protect affected stakeholders, but affected stakeholders often express a disconnect between these procedures and what happens in practice. The following themes are issues raised that can improve national-level MSE, and help in identifying and understanding potential bottlenecks and limitations in governmental and technical processes.

The environmental impact assessment (EIA) is a procedure that attempts to understand, identify, and limit the environmental and social impacts of development projects. The procedure of Finnish EIA includes programs for environmental impact assessment and environmental impact statement, which are subjected to public hearings. In addition, one part of EIA is to consult those whose conditions or interests may be affected by the project. To ensure MSE, there is a need for reliable, predictable, and consistent rules surrounding the EIA procedure. Furthermore, affected stakeholders should be well-informed of the process and know where they can get official support and guidance if they feel the process is not being fairly implemented. It was found that local stakeholders have revealed mistakes in the developer’s EIA report. The residents and entrepreneurs have themselves funded research and revealed mistakes in the mining company’s assessments and applications.

The work of public authorities has not been enough. The public officials have conducted inadequate reports and statements. For example, the Natura 2000 statement of ELY (Centre for Economic Development, Transport, and the Environment) was changed because of our actions, because ELY had not considered the cumulative effects of Hannukainen and Kaunisvaara.

Participants discussed the possibility of an “enhanced EIA”, and overhauling the current EIA and permitting process to better identify and understand the social impacts of development projects that need to be adequately resourced by developers and government. This would be akin to obtaining social licence to operate (SLO); a procedure that identifies and understands the social impacts of development projects in greater detail that incorporates many of the elements of meaningful stakeholder engagement.

Marine spatial planning is an important tool to map and mitigate the often conflicting and opposing uses of marine space. An important consideration when developing offshore wind power is identifying the most suitable locations given the economic, wind, and sea conditions against the environmental and social impacts and competing marine uses. There is a limited amount of space available in Finnish waters to develop offshore wind power, so correctly identifying the most suitable locations is critical. Holistic management of the entire marine area to identify and ensure the correct locations could be introduced to fully understand, map, and mitigate environmental and social impacts. This holistic management could include all territorial waters in Finland, and the exclusive economic zone (EEZ), in cooperation with

neighbouring countries to plan infrastructure development and identify cross-boundary impacts. Currently, the process for permitting and licensing offshore wind is unclear in the EEZ, and the procedure should be clarified. Furthermore, this holistic planning should be conducted with research and science-based evidence in conjunction with extensive stakeholder participation.

A common theme discussed in both research studies was the need for improved collaboration and cooperation between ministry departments. Furthermore, additional resources could be provided to ministry departments responsible for the permitting and licensing phase. Critique towards the governmental structures was brought up. Respondents alleged contact authorities claiming they do not have the financial resources to ensure that the details in the EIAs are correct.

The ELY centre claims that they don't have the financial resources for it, but I bet they also don't have the will for examining all the things that the mining company says in their papers. [...] So, we have done the job of the public authorities. It is quite sad, that we are the ones that must do it.

Oftentimes, this leads to decreased trust in the government processes in affected stakeholders if those responsible for the process are not properly funded or trained to handle complex cases impacting their livelihoods. Furthermore, enhancing the cooperation and collaboration between ministry departments could streamline the process of information sharing and speed up the permitting process. A national roadmap or framework for development of offshore wind could be implemented to support and guide the municipalities in Finland. A national plan will remove some of the planning and decision-making burden from municipalities and allow for cohesive nation-wide development of offshore wind in line with sustainability and biodiversity targets.

The final key theme emphasized in both research projects is the need for research, education, shared knowledge, and science-based evidence for decision-making and planning. This theme is an important element of several of the other points raised above and is critical for supporting the planning and decision-making phase and promoting trust for development projects in local communities. Marine spatial planning is strongly supported by understanding site-specific conditions and potential impacts from the development of offshore wind in the area. Furthermore, as noted above, there is limited space for development of offshore wind in Finnish waters, so identifying the optimal locations through analysing location and site-specific impacts based on scientific and local knowledge is crucial. Education and technical training for the next generation of engineers, policymakers and other specialists was a topic raised several times by expert stakeholders. There is a need to develop educational and technical programs that support the development of specialists interested in the just green transition.

## **Discussion**

This chapter synthesizes results from two research projects exploring the sustainable development of offshore wind and citizen perspectives of mining activities in Finland. By doing so, we reveal and present insights on how to engage stakeholders effectively and meaningfully in large-scale development projects. Results of the expert workshops and stakeholder interviews suggest there are several elements to meaningful stakeholder engagement. First, affected

stakeholders must have adequate capacity to impact the decision-making and development process. Second, communication should be transparent and information easily accessible by all those interested. Third, the concerns, protests, feedback, and wishes of affected stakeholders are heard, understood, and mitigated. Fourth, holistic marine spatial plans should map and identify impacts and conflicts arising from competing marine uses. Fifth, there is a need for clarification of the permitting and licensing process of offshore wind, particularly in the exclusive economic zone (EEZ). Six, collaboration between ministry departments should be improved and additional resources are needed in research, training, and education. Finally, objective third parties should be involved in the EIA process to ensure all affected stakeholders have their concerns heard. Furthermore, the EIA process could be overhauled to include an “enhanced EIA” that focuses on the social impacts of development projects.

The results presented in this chapter represent steps that can be taken to engage affected stakeholders in a meaningful way. We are not prioritizing or providing information on which are the most important as each are applicable and broadly relevant. These results are consistent with prior research exploring different wind power projects and social impacts. The ability to affect outcomes and decision-making has been shown to be of key importance in Canadian onshore wind power projects (Walker & Baxter, 2017), and we found this a critically important element for development approval. Respondents noted the need for accessibility and transparency of information from developers to build trust that the project will benefit the community, and the harmful impacts minimized or mitigated, a similar sentiment echoed in prior research in the US (Elmallah & Rand, 2022; Firestone et al., 2018). These elements build trust in the local community that the process of development is fair and just (Bowen et al., 2010; Firestone et al., 2020; Wüstenhagen et al., 2007). Respondents emphasized that these elements were missing, and trust in the development process, and the broader democratic process, was lost. There is a body of literature showing the need for trust between affected stakeholders and developers in development projects. Processes and outcomes that are perceived to be unfair can increase protests, harm relationships, and divide communities if opinions are split (Gross, 2007). According to Fraser (2021), a development project’s opposing stakeholders may refuse to collaborate with a company lacking public trust, which can further hinder the advancement of the sustainability of the project. Furthermore, transparency of the process can contribute to building trust in long-term development projects (Heikkinen et al., 2016). Establishing and maintaining trust throughout the entire lifecycle of the wind farm can have an impact on the public acceptance of the project (Hall et al., 2013).

Public involvement in development projects is often highly localized to the affected area (Solman et al., 2021). However, large-scale development projects can have cross-boundary impacts that spread from impacting only the affected area. The marine space available for development of offshore wind in Finland is currently limited to the west coast due to defence concerns and interference with radar technology. Consequently, ensuring that the most suitable location for offshore wind development is paramount to mitigating the environmental and social impacts. Holistic planning and management of the marine space through extensive marine spatial planning of the entire sea area can be an important step to understanding and identifying impacts. This sentiment is echoed in the EU’s ambitious plans for offshore wind and has emphasized the need for iterative marine spatial plans by member states (European Parliament, 2022). This broadens the scope of analyses and identifies cross-boundary impacts of development. Iterative and detailed marine spatial plans that are developed with strong participatory consultations can aid in minimizing conflicts from competing users and consider the environmental and social impacts of combining uses of the marine space (Chen et al., 2015;

Lester et al., 2018; Schillings et al., 2012; Schupp et al., 2021b). Furthermore, Billing et al. (2022) shows that combining offshore wind production with other uses of the marine space improves perceptions and is seen as a positive improvement by local stakeholders. Identifying and developing strategies for mitigating potential conflicts is crucial for ensuring sustainable marine development (Kitsiou & Karydis, 2017). Currently, Finland's marine spatial plans covers the territorial waters only. The marine spatial plan identifies the most optimal locations for offshore wind, given the economic feasibility against the environmental and social impacts of development (Virtanen et al., 2022). Expanding the plans to cover Finland's exclusive economic zone, in a similar science-based and participatory led approach, could be an effective tool for mapping competing marine uses. This should be completed in conjunction with clarifying the permitting and licensing process for development in the EEZ. Furthermore, cooperation and collaboration with neighbouring countries, or entire sea areas, could be an effective tool to minimize cumulative impacts of large-scale marine development projects.

Local and community ownership of wind energy turbines is one potential solution for communities to trust the decision-making and development process in their local areas. Community ownership of onshore wind turbines has been an effective tool for development in, for example, Germany (Chezel & Labussière, 2017) and the UK (Leaney et al., 2001). Community ownership ensures benefits, such as employment, revenue and electricity generation, remain in the community (Leaney et al., 2001), and allows citizens to take responsibility and ownership of development projects. Consistent with prior research (Smith & McDonough, 2001), respondents revealed they often felt powerless to affect the decision-making process without expert or legal know-how and experience. Decision-makers often prefer technical evidence to support concerns (Rydin et al., 2015), over community or local knowledge. Community ownership ensures that affected stakeholders have control over the decision-making of the project; where often they are rejected from the decision-making process as their input is seen as being based on "emotion" (Devine-Wright, 2005). Local communities and affected stakeholders can be welcoming toward development projects if there is trust that benefits will remain local and harmful impacts are mitigated and minimized (Walter, 2014).

It is important to ensure that the process of engaging with stakeholders should not simply be a checkbox exercise or a one-way consultation process (OECD, 2018). Our results suggest that affected stakeholders alleged they were sometimes excluded from the consultation and discussion process. A rigorous consultation process with opposing and conflicting viewpoints where consensus can be reached oftentimes leads to more effective and meaningful decisions and actions than a simple one-way information exchange (Owens, 2004). Prior research reveals that the EIA procedure has become a "tick-box" exercise (Whicher, 2021). An overhauling of the EIA process has been suggested to include an "enhanced EIA" that examines and identifies social impacts in greater detail, akin to the social licence to operate (SLO), most adopted in the mining industry (Hall et al., 2015). Historically, social impact assessments have played a minor role in the broader EIA procedure in mining projects (Suopajarvi, 2013). However, developers are increasingly becoming interested in obtaining SLO as it ensures communities trust the development process and acceptability and acceptance for the project is high. Developers must ensure close and authentic engagement with the community to build trust and obtain SLO (Prno & Scott Slocombe, 2012) and provide developers with a competitive advantage over the long term (Hall & Jeanneret, 2015). Incorporating the need for SLO in wind power projects and into the EIA procedure could strengthen the social impact assessments and promote meaningful stakeholder engagement.

One final consideration that should be emphasized is that the EIA procedure is not a requirement for wind power parks with 10 or less turbines or a total capacity of less than 45 megawatts. The Finnish Wind Power Association has produced a map (<https://tuulivoimayhdistys.fi/en/wind-power-in-finland/map>) showing wind power parks in various development stages. This map reveals several of these parks fall below the requirement for an EIA. Consequently, there is limited recourse for affected stakeholders to impact the decision-making process for small onshore wind power parks. Currently, there is limited scientific research conducted in Finland to ascertain how these small power parks have impacted the surrounding environment and communities post development or the cumulative impact of these smaller wind parks on the region.

The results in this chapter stem from two different research projects collecting data from expert stakeholders and affected stakeholders. Such a method can yield valuable insights. Expert stakeholders reveal knowledge on how the industry operates, technical information on the processes and technology, and policy procedures. Affected stakeholders, by contrast, reveal knowledge on site- and area-specific information, local knowledge, and community interactions. Combining knowledge and expertise from both groups of stakeholders is important for effective decision-making (Reynaud et al., 2015). We were initially interested in exploring the differences in understanding of these two groups of stakeholders and how their opinions differ. However, we found that both groups often discussed similar issues in promoting meaningful stakeholder engagement. The biggest differences were in the type and scale of processes. For example, expert stakeholders discussed improvements in MSE in the context of marine spatial planning, permitting, and licensing, representing national policies of MSE. Affected stakeholders focused on MSE that impacted them directly from the local perspective. The stakeholders described that the national interventions are not functioning on a local level and fail in protecting their interest. Through combining the insights from both groups of stakeholders, we present a holistic approach to MSE that identifies the limitations of national processes, exploring the disconnect between local and national level approaches on MSE, bridging the gap between the two.

## **Conclusion**

The profound impacts of climate change require urgent decarbonization of our energy systems. Offshore wind can be vital for the green transition, but should not come at the expense of a just and environmentally sustainable transition. Engaging stakeholders in a meaningful way can aid in identifying, understanding, and limiting the social and environmental impacts of offshore wind development. Finland has huge potential for offshore wind, but current capacity is limited. Finland could become a leader in renewable energy development while implementing practices, procedures, and policies to support and ensure meaningful stakeholder engagement and ensure a just and sustainable transition. We present empirical results and guidance from two Finnish case studies exploring MSE in large-scale development projects. These results can be used as guidance and encourage discussion on how to engage stakeholders and understand the potential limitations in national interventions effectively and meaningfully.

The EU emphasizes the need for public participation and communication (European Parliament, 2022) in the development of offshore wind for meeting ambitious climate targets. Many of the issues raised in this chapter are general for most offshore wind development projects, and we have used Finland as an example of a country with limited development but

high growth potential, and the guidance can be taken to other countries with similar circumstances. Furthermore, offshore wind is a cross-boundary issue and cooperation is needed with other countries in infrastructure development, investment, and identification and mitigation of impacts. Interested parties across different countries can use the results presented here as guidance to promote socially and environmentally sustainable projects or understanding the potential implications of (in)effective stakeholder engagement.

The insights and results presented in this chapter are by no means an exhaustive list of steps. These should be taken as general guidance only as there are many site- and location-specific details that should be accounted for with each development project. We synthesize results from two research projects and take guidance from other industries that have historically struggled with obtaining social licence to operate. We are presenting results exploring different development projects; however, similar issues are faced by affected stakeholders by both wind power and mining. Consequently, we can produce guidance and insights to develop effective steps for meaningful stakeholder engagement for the offshore wind industry. We contribute to the scientific discussion by providing a foundation for developers, decision-makers, affected stakeholders, and those interested in the process to understand and identify the steps needed for ensuring meaningful stakeholder engagement in an industry where demand is rapidly increasing.

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# THE MEANINGFULNESS OF STAKEHOLDER ENGAGEMENT IN GHANA'S OIL SECTOR

## The Case of Local Chiefs in the Western Region Negotiating for Oil Benefits

*Asaah Sumaila Mohammed*

### **Introduction**

Ghanaians, particularly those living in the western coastal area, civil society, government agencies and other influential figures in the country's economy, had high expectations after the discovery of oil in 2007 and the commencement of production in 2010 (Yalley & Ofori-Darko, 2012; Mohammed et al., 2022). High hopes were raised as a result of media hype, and hopeful remarks from politicians, and other civil society organizations. In particular, 10% of the petroleum earnings was promised by the government to the Western Region's residents, along with the construction of fertilizer and other ancillary companies to create jobs (Graham et al., 2016).

Following a long history of debates about the mismanagement of natural resources endowment of the Western Region and associated poor infrastructural and human development (Mohammed et al., 2022; Mohammed et al., 2023), the traditional leaders (Chiefs) and people of the Western Region have proposed that a share of the oil revenue be used for the general development of the Region. It is the view of the Chiefs and people of the Western Region that, given the immense personal, economic, and ecological sacrifices and contributions to national development, the Region is not receiving commensurate benefits. The region is rated relatively poor in terms of infrastructural development, which is manifested in poor health facilities and services, poor road networks, high illiteracy levels, high unemployment and out-migration of the youth, high school dropout rates, and very low school enrolment rates (Owusu & Boatemah, 2014).

The high euphoria coupled with some bad experiences in the mining sector raises the concern of good governance capabilities of Ghana to ensure that the oil and gas production benefits all stakeholders, but particularly the local populations whose livelihood are impacted by the operations of the oil and gas companies (Ayelazuno, 2014; Mohammed et al., 2014; Ovadia et al., 2020). Nigeria's bad experiences with the 'resource curse'<sup>1</sup> also alarmed many Ghanaians and good governance advocates apparently due to poor benefits accruing to local

populations instigating several contentions and, sometimes, reprisal conflicts between local people and oil companies (Okpanachi & Andrews, 2012; Kumah-Abiwu et al., 2015; Tuokuu & Kuusaana, 2015). Several studies have affirmed that host communities in oil- and gas-producing regions have suffered while national elite international capital and transnational companies have benefited (Bebbington et al., 2008; Bebbington et al., 2014; Cuba et al., 2014; Buckle & Sam, 2017, Ovadia et al., 2020, Mohammed et al., 2022). In addition, revenue sharing, special government initiatives and corporate social responsibility (CSR) investments by international oil companies have not alleviated the negative impact of oil and gas exploration on host communities (Mohammed et al., 2022).

Mitigating these negative impacts requires holistic stakeholder engagement that creates a platform for dialogue where communities and their leaders and other interested parties can raise concerns, ask questions, and access accurate information about oil and gas investments and their impact on local communities and national development. Furthermore, communities can have a voice in decision-making when it comes to the planning, approval, and implementation of a project and enjoy the benefits that come from it. According to Buckle and Sam (2017), the multi-stakeholder dialogue platform provides an opportunity for communities, oil, gas and energy companies, government, and civil society to engage in constructive dialogue and develop mutually beneficial relationships among stakeholders. Consistent with the above view, a recent study by Adom and Simatele (2022) found that stakeholder engagement is critical for decision-making and has a significant impact on the management of sustainable natural resources, creating opportunities for attaining and retaining a “social licence to operate” and thereby facilitating current and potential future operations and the expansion of extractive companies (OECD, 2017).

From the extant literature, the concept of stakeholder engagement has received much attention in extractive sector research and has been perceived to be very necessary for effective governance and benefit sharing in the extractive sector. Notwithstanding the extensive promotion of the concept, several questions are emerging particularly, about how meaningful are stakeholders being engaged and are these engagements promoting their interests. In the Western Region of Ghana, where oil and gas are being produced, different stakeholder groups have emerged at different levels to engage and negotiate on behalf of extraction-affected communities and indigenous populations (Mohammed et al., 2022). As already indicated, several promises to the people of the Western Coast, in particular the 10% share of the oil and gas resources for the development of the area has ignited the interest of the local as a major stakeholder in the negotiation process. As the Chiefs position themselves as custodians of the land and people, they feel responsible for negotiating on their behalf and safeguarding their interests. The questions to be posed therefore are: How are they engaging the relevant authorities to conduct these negotiations? Do the Chiefs have the trust of their people to negotiate on their behalf? Are their actions meaningful and yielding any results, and what factors might be challenging their efforts? What local-level structures exist to stimulate meaningful engagement of stakeholders in the oil sector of Ghana? Guided by the concept of Meaningful Stakeholder Engagement (MSE), this chapter has examined the engagement processes of local Chiefs as stakeholders and how that is meaningful and beneficial to the local population.

### **Understanding Meaningful Stakeholder Engagement (MSE)**

The chapter engages literature on the concept of MSE to explain the negotiation processes and outcomes by the local Chiefs in the Western Region. Meaningful Stakeholder Engagement

is a normative term that specifies optimal engagement strategies with stakeholders, especially those who are likely to experience negative effects from business or government projects or are already affected by them (Buhmann et al. 2024). A variety of theoretical and applied knowledge fields, including impact assessment, organizational theory, stakeholder theory, corporate ethics, community development, natural resource management, and governance, are used to inform both the concept and its application. The need to comprehend MSE and what makes engagements truly meaningful, not just from the top-down perspective of governments and business organizations, is being supported by recent legislation and ongoing best practice emphasis on MSE as a key component in risk-based due diligence and impact assessment processes (OECD, 2017; Adom & Simatele, 2022; Buhmann et al., 2024). Without such a focus, risks or impacts are likely to be overlooked, so stakeholder engagement and the impact assessment process should be focused on understanding impacts from the perspective of those either at risk or affected. This means that the impact assessment process should be fully designed to take departure into, account, and respond to the needs for data, explanations, and discussions based on the concerns, needs, and live people (Idemudia, 2007; Buhmann et al. 2024; Mohammed, 2019). This process is conceivable, but it is unlikely to be meaningful unless those who are actually or potentially affected by it are given the knowledge and assistance necessary to interpret it and put it in their perspective.

In MSE, “engagement” implies a discussion that actively and deeply incorporates those affected by an action, underscoring the bottom-up aspect (OHCHR, 2012). In light of the processes that are required by law concerning impact assessments of the environmental, social, strategic, and other kinds, interaction is expected to go beyond the legal bounds of consultations. It is still unclear, however, what exactly this means in terms of what makes for a good process for involving affected stakeholders and how to transform formal requirements and top-down approaches into meaningful engagement from the perspective of local communities (Doron & Sened, 2001; Thompson et al., 2010; Buhmann et al., 2021).

## **Methods**

### *Study Design and Data Collection Processes*

A qualitative case study was deemed appropriate for this chapter. According to Thomas (2011), a case study is a kind of qualitative research that concentrates on one thing, issue or phenomenon, looking at it in detail, and not seeking to generalize from it. His emphasis is that the case study is about the particular rather than the general.

To determine specific events in which stakeholder engagement occurred or is ongoing between local Chiefs, oil and gas companies, and the government, a series of field visits were made to the six coastal districts of the Western Region at different times: from 5 to 15 February 2017; from 10 to 15 July 2019; from 20 to 25 January 2020; and from 15 to 30 July 2021. Upon a series of interviews with 14 local chiefs, several events were found which demonstrate how local Chiefs had engaged the government and oil and gas companies for benefits from the oil and gas industry.

In-depth face-to-face interviews were conducted with respondents based on their availability. Detailed field notes were taken during interviews alongside tape recording. Some tape recordings were transcribed and notes were developed to make meaning of the responses. Further information was collected from the registry of the Western Regional House of Chiefs. Hard copies of documents such as reports of meetings and media statements made

by the Chiefs were photocopied. The typed interviews were transcribed and thematically analyzed. Attention was given to responses which demonstrated how the Chiefs engaged with government and oil companies and the extent to which their engagement resulted in meaningful outcomes. Analytical memos were developed out of the field notes to guide the structure of the chapter. The results are presented in narratives to portray the voices of the respondents.

## **Results and Discussion**

### *Background of the Case (10% Proposal)*

The genesis of the ‘ten per cent (10%)’ proposal dates back to the year 2010 when Chiefs (Traditional Rulers) and civil society in the Western Region organized a two-day Western Region Development Forum in Takoradi from 24 to 25 September 2010. Under the theme ‘Preparing Minds and Space concerning the Oil and Gas Culture’, the forum occasioned discussions on the potential impacts of the oil found in the development of the Western Region. Stakeholders at the forum were of the view that in the Western Region in particular, the coastal communities deserve special benefits from the oil revenues because local populations are affected in many ways, including loss of livelihoods. Of course, the effects of oil and gas extraction on livelihood, social infrastructure, and cost of living in the Western Region have already been researched and confirmed (Andrews, 2013; Obeng-Odoom, 2014; Andrews & Siakwah, 2021, Mohammed et al., 2022).

Under the auspices of the Western Region House of Chiefs, the Traditional Chiefs are therefore demanding at least 10% of oil revenues to be spent by the government for the development of the Western Region. The Western Region Coordinating Council (WRCC) and local politicians, including Members of Parliament, were also in support of the agenda of the Chiefs.

The sea is part of the land under our jurisdiction. Each traditional area along the coast has its boundary at sea and that is why when any accident occurs at sea the fishermen report to the respective Chief. We control the activities of fishing at sea just like we do on land for farmers. We think the government is not trying to understand traditional governance and if this continues, it may result in conflict like those in the Niger Delta in Nigeria.

(A Paramount Chief along the coast of Western Region, 13 July 2019)

At the end of the forum, several recommendations were made and are contained in a communique which was issued after the forum. Notable among these recommendations are:

- The development of a Western Region Accelerated Growth Programme to harness the economic potentials of the Region in human resources, mining, agriculture, forestry, fisheries, tourism, and manufacturing;
- Sekondi-Takoradi should be developed into an industrial hub for oil and gas, agrobusiness, finance, and tourism;
- The government should, as a matter of urgency, establish a Western Regional Development Fund to facilitate accelerated development of the Region with the hope that this will help mute the strong and growing sentiment of alienation and marginalization;

- The oil, mining, and other companies operating in the Region should work closely with the Regional authorities, the House of Chiefs and the communities to develop a comprehensive Regional Corporate Social Responsibility Plan;
- The Ghana National Petroleum Company (GNPC) and the headquarters of the oil and gas industry should be moved to the Western Region to promote the spatial planning of Ghana.

Interviews with the leadership of the Western Region House of Chiefs indicated that the above-mentioned recommendations remain dear to their hearts. As one respondent remarked:

‘Why should we be living in the shadow of money?’ Most of the gold, timber, rubber and now oil comes from our region, yet our people are poor, and our roads, hospitals and schools are in bad condition. We cannot continue this way and that is why we are making this proposal.

(Paramount chief and member of the Western Region House of Chiefs at Sekondi, 23 January 2020)

### ***Achieving the 10%: Stakeholder Engagement Processes and Strategies by the Chiefs***

In Ghana, chiefs are seen as crucial stakeholders in their communities’ development. Article 270 of the 1992 Ghanaian Constitution recognizes the institution of the Chieftaincy and ensures that Traditional Councils will continue to operate in compliance with customary law. The British employed Chiefs to uphold law and order on behalf of the colonial government because they recognized and acknowledged the Chiefs’ influence and power as being supported by the well-organized institution of Chieftaincy at the time, which was responsible for carrying out the Indirect Rule (Honyenuga & Wutoh, 2019). As leaders and community representatives, Chiefs are highly esteemed by the government and other political actors such as leaders of political parties, and advocates for good governance among others (Honyenuga & Wutoh, 2019). They protect their subjects, act as a mediator between the government and the populace, act as a symbol of unanimity in times of conflict or disagreement, mediate conflicts between individuals, families, clans, and communities, and start development projects.

Recognising their importance as indispensable stakeholders as explained above, the Chiefs as far back in 2010 met with the President of the Republic of Ghana, Professor John Evans Atta Mills, to discuss their interests and the basis of their demand for 10% of oil revenues. The President (who was a presidential candidate for National Democratic Congress, the major opposition party) had promised the House of Chiefs during the campaign for the 2008 Presidential and Parliamentary elections that he would invest substantial amounts of the oil revenues in the Western Region. Therefore, when the President won the elections, the House of Chiefs decided to pay him a courtesy call and to remind him of the promise. The President, however, could not fulfil the promise and eventually died in June 2012. Subsequently, the Chiefs kept on engaging the government for their demand. On 9 April 2016 at a general meeting of the Western Region House of Chiefs at Sekondi, the Chiefs engaged further with the Regional Minister and reminded him about the promise of the late President. Reactions of several members of the House of Chiefs during interviews suggest that they were not satisfied with the government’s response to their demands. On 13 August 2015, at a meeting between the House of Chiefs and the Western Regional Coordinating Council at Karela Beach Hotel,

some of the chiefs expressed their disappointment and vowed to use all other possible means to force the government to comply with their demands.

Another form of engagement between the Chiefs and government was occasioned during the campaign for the 2016 Presidential and Parliamentary elections. In this instance the Chiefs engaged the government in power represented by the National Democratic Congress (NDC) and the main opposition party, the New Patriotic Party (NPP), to honour their demand in exchange for votes from the Western Region. The chiefs affirmed employing this strategy during the elections and subsequently the ruling NDC government lost the election to the main opposition party, the New Patriotic Party (NPP). Some of the Chiefs stated during interviews that the NPP Party had agreed to honour their request during their engagement with the presidential candidate. One member of the Western Region House of Chiefs remarked that:

The presidential candidate of the NPP came to promise us, the chiefs of the Western Region that when we convince our people to vote for him and his party, he would ensure that a substantial amount of the oil revenue even more than the 10% will be invested in the Western Region. He assured us that his government would not promise and fail as others did. We were therefore convinced by this promise and indeed supported the NPP party during the 2016 general elections which eventually resulted in the victory for the NPP party.

(Paramount Chief and member of the Western Region  
House of Chiefs 10 February 2017)

Apart from engagement with government and political actors, the Chief also considered engaging directly with the oil and gas companies. Some of the Chiefs believe the oil and gas companies in their quest to establish good relations with the affected communities would respond to some of the demands which has not been honoured by the government. Some of the Chiefs have taken to this strategy due to some successes gained by some Chiefs concerning gold mining ((Akabzaa, 2001; Tsuma, 2009; Owusu & Boatemah, 2014). In this respect, the Paramount Chief and President of the Western Nzema Traditional Council was described as being very influential in gaining support from the oil companies. Several infrastructure development projects taking place in many communities in the Jomoro District, including small town water systems, boreholes, school buildings, and the renovation of hospitals, are associated with the Chief's lobbying with oil and gas companies to provide them.

Other chiefs, such as the Paramount Chief of Lower Axim and Paramount Chief of Eastern Nzema, have adopted personal engagement strategies, including lobbying and taking appointments as board members of the oil and gas companies to influence some projects such as boreholes, youth development centres, and improve fish smoking equipment among others for their communities.

Although this engagement appears to be meaningful in terms of positive outcomes and benefits to the local population, some of the Chiefs at the regional level are unhappy with the individual level of engagement by their colleagues. Such action has been described by others as divisive and would undermine their collective force at the regional level. For instance, one member of the Regional House of Chiefs remarked, "How could we all be fighting for one cause and others are going behind in bed with the government and oil companies for their gains?" (Paramount Chief, 27th July 2021).

The individual-level engagement with oil and gas companies by some Chiefs is also a concern for some indigents in areas where respective Chiefs are not able to engage personally with

the companies. Indigents from these areas feel the influence of other chiefs would undermine the collective action of the Regional House of Chiefs and will not bring equal development to all communities affected by the oil and gas operations. The individual interest of Chiefs in the extractive sector benefit negotiation has been noted in the literature, particularly in Nigeria and Ghana (Obi, 2003, 2014; Rwabizambuga, 2007; Tsuma, 2009). Tsuma noted that some chiefs in the Tarkwa mining area are suspected by local actors of acting in the interest of mining companies and have often jumped to their defence.

Another engagement strategy by the Chiefs is through the media. The Chiefs have adopted media as a medium to engage with the government and the oil and gas companies. Several contentious media advocacy strategies, such as press statements, have been issued by the Regional House of Chiefs to get the attention of development partners, civil society, and the media to buy into their demands and, possibly, support them in demanding their 10% request from the government. For instance, in September 2016 the Paramount Chief of Lower Dixcove and acting President of the Western Region House of Chiefs Nana Kwasi Agyemang IX renewed the demands of the Chiefs during an interaction with the media. Nana Agyemang reiterated the position of the Chiefs during an interview with Mr Kwaku Owusu Peprah, a reporter at Myjoyonline, on 20 September 2016, where he insisted that the government must invest 10% of oil revenue in the Region (Peprah, 2016). The Chiefs expressed their disappointment with the various political parties and politicians for ignoring their call for a special percentage of the oil revenues and have therefore warned the political parties not to underestimate their powers since they have control of their people and can influence their voting decisions (Peprah, 2016).

### ***Meaningfulness of the Chiefs' Engagement with Government and Oil and Gas Companies***

Generally, the leadership of the Western Region House of Chiefs described the outcome of their engagement with government and oil and gas companies as unsuccessful and therefore not meaningful in the context of MSE. They indicated that none of the interests indicated in their 2010 communique had been fulfilled by the government. Nonetheless, some individual Chiefs, as indicated above, have confirmed their engagement with oil and gas companies as meaningful. The foundation of the Chiefs' engagement with the government and oil and gas companies flowed with limitations. Although the Chiefs had started their engagement earlier (in 2010 when oil production just started), their level of knowledge in the oil and gas industry was considered abysmal. In the context of MSE meaningful engagement means starting early, enhancing the stakeholder capacity to engage strongly and actively (Buhmann et al. 2024). Admittedly, the oil and gas industry was new to the Chiefs, and hence their capacity was low.

Several factors were reported by respondents to have affected local Chiefs in their engagement processes for benefits from the oil and gas resources. Some of the Chiefs have admitted that they have been unable to develop comprehensive plans cataloguing their needs and expectations from the oil and gas sector. For instance, when the Chiefs made the demand for 10% of oil revenue investment in their region, they did not accompany this request with any development framework. This appeared, therefore, a mere political statement rather than a negotiation document requirement response from the government. The Chiefs, based on their assessment, concluded that the Region deserves at least 10% benefits from the oil resources. Interviews with senior government officials at the Ministry of Petroleum and Ministry of Finance suggested that the Chiefs merely issued a communique stating their interests.



The communique, however, did not contain any analysis to support their demands. Some of the chiefs admitted the concerns of the government officials. One of them stated:

We were not serious with our request and that is why the government is not listening to us. We do not know exactly, what is contained in the 10% of the oil revenues. We need to get serious and conduct detailed analyses to arrive at concrete demands and let the government know that we understand what we are demanding. I believe, until we support our request with documented evidence, we cannot negotiate effectively.

(Paramount Chief, 27 July 2021)

The Chiefs have, however, expressed their limited access to information on oil and gas revenue flows to government and oil companies. Local Chiefs are of the view that access to such information would give them better information to guide their engagement with the government. The lack of disclosure of profits by the oil companies in Ghana has been criticized by civil society and is being described as a deliberate attempt of the government and oil companies to deny local stakeholder access to relevant information to enhance their engagements. It is strongly recommended that the government, in the framework of MSE, equip those who are currently or potentially affected with the necessary knowledge and provide them with support in interpreting and contextualizing it. This will make stakeholder engagement meaningful. According to Buhmann et al. (2024), this means that the impact assessment procedure should be completely planned to start with, take into consideration, and respond to the needs for information, justifications, and conversations based on the concerns, needs, and livelihoods of those who are already or potentially affected.

Recent developments in the Western Coast in terms of benefits accruing to the local population suggest great dissatisfaction in the area of employment of locals by oil and gas companies, government infrastructure development, and provision of alternative livelihoods. As noted by Mohammed et al. (2022), the hopes of the local population, including the Chiefs, on the benefits of the oil when it was discovered in 2007 are dying out. This has been attributable to factors such as poor engagement process of government and companies to explain the possible options of benefits available to the people. Although the government has not created specific spaces for engagement at the local level, it utilizes spaces created by civil society organizations (CSOs) for dialogue among the local population, oil and gas companies, and government. One such space was created by the Western Region Coastal Foundation (WRCF) in 2015 to stimulate dialogue and engagement among different stakeholders, particularly at the local community, district, and regional levels. Ideas, concerns, needs, suggestions, and grievances from the residents and local Chiefs are channelled regularly through the Foundation's dialogue structure to increase transparency and deepen accountability between stakeholders. The programme has a Multi-stakeholder Dialogue Platform, which offers communities, oil, gas and power companies, government, and civil society the opportunity to engage in constructive dialogue and develop mutually beneficial relationships towards the realization of stakeholder expectations. The dialogue platform collects citizens' and community views, concerns, needs, issues and developmental problems, analyzes and presents them to stakeholders for responses, redress, and resolutions. Government and oil and gas company officials provide feedback to community members and their leaders regarding the extent to which their wants and concerns have been met.

Different Chiefs appear to have different perspectives on the WRCF discourse sessions, according to an interview with some of them. Some agreed that they get to voice their

concerns to the government and oil companies during the discussion meetings. Some who held a different opinion felt that the WRCF was more than simply a talk show that didn't address the issues brought up. They claimed that the oil companies were forcing their agenda, influencing the platforms, and dominating the dialogue. This data is backed by a recent study by Andrews (2021) that demonstrates how oil companies “give sense” to stakeholder participation by approving and managing projects or initiatives that are thought to be reasonable to pursue through the “issue-selling” process. This means that, despite the results above demonstrating that stakeholders may be involved and perhaps believe their involvement matters, the engagement's outcome may not always align with the priorities of those who took part in the conversation sessions. The key takeaway from this is that processes of engagement are shaped by power relations and participant agency, neither of which should be taken for granted.

The lesson taken from MSE literature is that the multi-stakeholder dialogue process's longevity will depend on how well or how poorly engagement is handled during the conversation. This will therefore have an impact on stakeholders' likelihood to take part in upcoming conversation initiatives and, in turn, their willingness to institutionalize dialogue. Even though a significant number of the Chiefs reported that their engagement style and management communication also contribute to this, the greatest strength is their ability to constructively contribute to problem-solving through discussion.

### **Conclusion and Way Forward for Policy Development**

The chapter has provided evidence of stakeholder engagement taking place between local Chiefs, government, and oil and gas companies. The findings suggest that local Chiefs are employing different strategies to engage government and oil companies for their 10% demands. It appears very obvious that the government and oil and gas companies have recognised the importance of the Chiefs as key stakeholders worthy of engagement. This is evidenced by the level of space the government, political parties and oil companies accorded them during the engagement process. As shown in the discussion above, the Chiefs feel they hold the power to influence government, and even influence election outcomes. They felt their 10% demands would have been accepted without any hesitation by the government. The undesirable outcomes therefore call for the Chiefs to adopt different engagement strategies.

Spaces created for multi-stakeholder engagement such as the WRCF dialogue therefore become a very good option. The Chiefs explored the space, albeit not fully since some of them felt that the space was manipulated. Despite the flaws in the dialogue platforms, some Chiefs are still very likely to participate in such events in the future. Some of the Chiefs are willing to institutionalize conversation to continue engagement meetings after the WRCF project is completed. Some promised to continue organizing meetings after the WRCF project ends, and some Chiefs have encouraged district assemblies to institute such meetings and make them regular in coastal communities to further ensure the sustainability of the multi-stakeholder dialogue process among host communities, chiefs, government organizations, and oil companies.

In the contest of MSE, the chapter concludes that the actions of the Chiefs are essential to stimulate stakeholder engagement, which is a prerequisite for effective natural resources governance. The Chiefs initiating the engagement process was informing and set the conversation for discussion in Ghana at the time, especially when the country had just started producing oil and receiving revenues from taxes. It is therefore important for government and oil companies to support multi-stakeholder platforms that will guarantee that the host communities

and their leaders, particularly their Chiefs, are fairly represented to table demands such as the 10% oil revenue. This will influence the degree of trust and collaboration between them and those communities. It is envisaged that this process will be meaningful and will yield meaningful outcomes and, in the long term, maintain trust, prevent conflicts, and address harmful impacts in ways that are meaningful to those affected by oil and gas extraction.

The following further recommendations are made for policy and research consideration:

1. As Ghana celebrates its oil and gas and its associated potential for national development, it is important to recognise the interests of the local population and stakeholders affected by oil and gas production. Recognising local Chiefs will provide an opportunity for healthy engagement among government, local actors, and oil industry players, a situation which is not common in many oil-producing countries in developing countries. State coherent policies and structures to mediate effective engagement processes are therefore recommended to ensure that engagement outcomes are meaningful to the local population. In this regard, institutionalizing a government-sponsored multi-stakeholder engagement platform is particularly important.
2. As indicated in previous sections, the Chiefs are not strategically organized with a clear plan to negotiate with the companies and government. As prescribed in the literature of MSE, the actions of the Chiefs must result in outcomes which are visible to the local population. Except for the few positive outcomes from the negotiation of individual chiefs, the collective negotiation (10% request) has not yielded the desired outcome. This calls for repositioning and innovative strategy to revisit the request of the local Chiefs.
3. Once more, I recommend a better feedback system for concerns brought up during dialogues and engagement with the Chiefs and other local stakeholders. With the help of this suggestion, multi-stakeholder platforms such as the WRCF's dialogue platform will be able to strengthen its citizen feedback system and make sure that any issues brought up at meetings are dealt with effectively and quickly. Conscious efforts should be made to keep the public aware of the status of the problems they are raising and the stage at which those problems have reached in terms of their resolution.

### **Note**

- 1 The Niger Delta has been plagued by conflict, insurgency, loss of livelihoods, and environmental degradation, much of which is associated with the activities of extractive industries (Bannon & Collier, 2003; Ovadia et al., 2020).

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# MULTI-STAKEHOLDER ENGAGEMENT IN EXTRACTIVE AREAS IN BURKINA FASO, GHANA, AND GUINEA

Perspectives across Africa

*Emelia Ayipio Asamoah and Rusmond Didewuyem Anyinah*

## Introduction

This chapter explores how the concept of Meaningful Stakeholder Engagement (MSE) was applied in the delivery of the West Africa Governance & Economic Sustainability in Extractive Areas (WAGES) project in Burkina Faso, Ghana, and Guinea.

Meaningful Stakeholder Engagement (MSE) is a normative concept that describes ideal engagement practices with stakeholders, in particular those that are at risk of or actually affected by adverse impacts related to projects undertaken by companies or governments (Buhmann et al. 2024). The concept and its practice are informed by a combination of theoretical and applied knowledge areas, such as impact assessment, organizational theory, stakeholder theory, business ethics, community development, natural resource management, and governance, among others. Recent legislation and recurrent best-practice emphasis on MSE as a key element in risk-based due diligence and impact assessment processes are corroborating the need to understand what MSE is and what makes engagements truly meaningful, not just from the top-down perspective of governments and business organizations, but also from that of vulnerable and economically weaker stakeholders.

Ghana is blessed with a variety of commercially valuable minerals, including gold, diamond, manganese, and bauxite (Aboka et al. 2018; Anaifo et al. 2023). According to Appiah and Buaben (2012), the mineral and natural resources sector of Ghana has witnessed significant foreign direct investment since 2000 and as a result contributed to the country's economy through job creation and the growth of the country's Gross Domestic Product (GDP). Government of Ghana (2019) estimates that in 2019 mining and quarrying accounted for 12.6% of GDP, 18.38% of direct domestic revenue, and 19.05% in corporate tax over the same period. The 2020 Annual Report of the Ghana Chamber of Mines indicated that there are 13 large-scale mining companies licensed to operate in 16 concessions and about 1000 licensed small-scale mining companies engaged in gold mining alone in Ghana (2020).

The West Africa Governance & Economic Sustainability in Extractive Areas (WAGES) project was a six-year project, funded by Global Affairs Canada, delivered in Burkina Faso, Ghana, and Guinea. The project was implemented by two Canadian not-for-profit organizations: WUSC (World University Service of Canada) and CECI (Centre for International Studies and Cooperation).

The project facilitated the delivery of inclusive sustainable economic development, enhanced and accountable local governance, and improved dialogue on economic growth strategies and governance in its targeted extractive areas across West Africa.

The project used a multi-stakeholder approach in the delivery of its outcomes. Diverse multi-stakeholders' platforms across extractive sector companies, public agencies at the national and sub-national levels, civil society organizations (CSOs), community and traditional authorities were engaged. Multi-stakeholders' engagements were stratified into community, national, and regional levels. Engagements at each level operated as a continuum; where interactions at any level fed into activities at the other level.

The WAGES Project has been operational since 2016 in Ghana, Burkina Faso, and Guinea. Throughout its six years of implementation, the project focused on three key pillars of intervention: inclusive local economic development; improving local governance; and regional knowledge sharing. The project directly impacted more than 6000 women and youth entrepreneurs across the three countries. In Burkina Faso, Guinea, and Ghana, 33.8%, 56.5% 61.4% of businesses supported by WAGES reported growth in sales and revenue respectively.

### **Multi-Stakeholders' Engagement in Practice**

Multi-stakeholders' engagement was deployed as an approach in delivering the project from the outset; from the design phase, through to implementation and evaluation. The project envisaged this as an approach in view of the diverse interests and aspirations of the stakeholders and also as a way of strengthening shared ownership of the processes, activities, and sustainability of outcomes. To achieve this, a number of stakeholder institutions were identified, analysed and entered into formal relationships in the form of Memoranda of Understanding (MoU). Stakeholders' institutions involvement evolved at different phases of the project. Some agreements entered into lasted throughout the entire duration of implementation; others only enabled the delivery of a few specific activities within a short duration. There were no formal agreements too with some stakeholder institutions.

The WAGES project operationalized the concept of MSE at three key stages, interlinked with other minor activities. There was active participation of all stakeholders in each of the stages.

*First, the project design stage.* At this stage, the project consortium organizations, WUSC and CECI, engaged relevant stakeholders in all the three countries. The project design team employed the use of focus group discussions (FGD) and key informant interview tools to solicit the view of relevant stakeholders. These engagements helped to define the project goals and objectives, identify direct beneficiaries, partners, and relevant stakeholders across all the countries. This was conducted from the outset of the project.

*Second, midline and endline evaluations.* The project conducted two major surveys and other special-purpose surveys during the lifespan of the project. These surveys afforded all multi-stakeholders the opportunity to provide candid feedback about the progress of the

project towards the achievement of its goals. The surveys further helped stakeholders to reflect on their changes that were relevant to enhance project delivery. While women and youth were the primary beneficiaries, men and stakeholder institutions also benefited from the project's interventions in many forms.

*Third, knowledge-sharing forums.* As part of the strategy to continuously engage multi-stakeholders, diverse forums were organized at the local, national, and regional levels. Some of the forums were co-organized with other partners and some led by only the project. These included the bi-annual National Advisory Committee (NAC) engagements, Community Benefits Agreement (CBA) multi-stakeholders' workshop, and the Annual Regional Forum. These multi-stakeholder platforms provided varying opportunities for multi-stakeholders to share their views on different aspects of the project.

### **Meaningfulness of MSE at local, national, and regional levels**

All meaningful stakeholder engagements were classified under local, national, and regional levels (involving Ghana, Burkina Faso, and Guinea). Multi-stakeholders' engagements at each of these levels worked in an integrated function to deliver the project results. While there were continuous engagements among the three sets of stakeholders; each set of multi-stakeholders played a complementary role in the successful delivery of project results. At the district level in Ghana, Wassa East and Prestea-Huni Valley Assemblies served as the main stakeholders around which many activities and engagements at the local level were implemented. Local government institutions and CSOs helped design *Local Economic Development Growth Strategies*,<sup>1</sup> gender policies, operational plans, and stakeholder mobilization, and, in some cases, activity co-financing within their respective operational areas.

Furthermore, different economic groups, including palm oil processors, green business entrepreneurs, rice farmers, mushroom producers, and dressmakers, were key stakeholders who helped to determine the success of the economic objectives of the project. Stakeholders from business advisory service providers and business registration, certification and licensing agencies also provided a set of diverse services to project beneficiaries. This enabled business operations, expansion, and profitability for diverse stakeholders.

Endline survey data from the three countries showed that at least 66% of business owners supported by the WAGES project reported growth in their turnover or income. Employment rates for intervention beneficiaries also saw a 40% increase and 94% of women and youth said they have the power to decide their economic occupation.

At the national level; MSEs were organized to primarily improve local governance services and knowledge sharing among diverse stakeholders. These MSEs included a mix of stakeholders from local, national, and regional levels. This was done to cross-fertilize ideas and to improve service delivery to women and youth in all mining districts across Burkina Faso, Ghana, and Guinea.

In Ghana, a MSE approach was adopted to support the Mineral Development Fund (MDF) Secretariat to engage diverse stakeholders to review the Mineral Development Fund Act, 2016 (Act 912) and draft the Legislative instrument for the Act. The project also supported civil society organizations, traditional authorities, and local authorities to disseminate information on mining laws to mining communities. The project again operationalized the MSE concept through capacity-building engagements for Community Mining Schemes.

In Burkina Faso, multi-stakeholders' engagements, trainings, and awareness-raising enabled 3,204 women, 1,598 men and 2,955 youth to become better acquainted with legal and



regulatory texts related to mining codes, and the environment, thus contributing to 88% of communities' members reporting improvement in their knowledge of policies, standards, and best practices (WAGES project Global Report).<sup>2</sup> For example, on 20 November, 2019, the Project, in partnership with the Canadian High Commission to Ghana, Sierra Leone and Togo, organized a Multi-Stakeholder Forum on Community Benefits Agreements (CBA) for the extractive areas. The day's forum was on the theme "Mining Social License and the Community Benefits Agreements Approach: What Prospects for Ghana?". The Forum brought together 146 stakeholders from district and national government, civil society organizations, diplomatic representatives, and both public and private sector actors within the extractive industry.

At the regional level; multi-stakeholder engagements mainly involved different high-level stakeholders drawn from public ministries, agencies, mining companies, business associations, and civil society organizations. Multi-stakeholder engagements took the form of an interface among different stakeholders converging in one country for deliberations on a significant theme related to the project.

While each country was allowed to identify stakeholders at each of the above discussed levels, all activities of multi-stakeholders were aligned to the overall project goal and the project implementation plan. Mandates of multi-stakeholders and engagements in each country varied but converged at meeting the strategic objectives and goal of the project.

### **Framework for engaging and working with multi-stakeholders in extractive areas**

To achieve meaningful outcomes from the use of a multi-stakeholders' approach in delivering interventions in extractive areas, the lead actor or stakeholder must define how the engagements are to be conducted. All team members must have a shared understanding of the approach and the expected outcomes from the use of the approach. In the case of the WAGES Project, this approach was explained to any member who joined the project at any stage. The use of the approach and some of the lessons learnt were shared with new staff of the project during orientation sessions. Stakeholders that were also engagement had their respective roles explained to them. Some of the difficulties that a new staff was likely to face in the application of the approach and suggestions as to how to welcome these challenges from an individual stakeholder perspective.

### **Case studies and outcomes of meaningful stakeholders' engagements in Ghana**

#### *First gender equality policy for the mining, oil and gas sectors in Ghana*

As part of the project's purpose to deepen gender equality, transparency, and accountability in the extractive sector in Ghana, the project worked collaboratively with the Ghana Extractive Industries and Transparency Initiative (Ghana EITI). Ghana EITI is responsible for ensuring due process and transparency in the entire value chain of the extractive industry in Ghana with companies and governments. Ghana EITI is also aims to enhance the demand side of social accountability by providing public insights into contracts, production, regulation, export volumes, and revenues derived from the exploitation of the country's extractive resources; create a platform for public debate on the spending efficiency of extractive sector revenues; identify gaps and weaknesses in resource revenue management; and make recommendations to prevent revenue leakage and abuse.<sup>3</sup>

A Memorandum of Understanding (MoU) between WUSC and Ghana EITI was signed in 2021 that provided a mechanism for both WUSC and Ghana EITI to cooperate in the delivery of mutually progressive and supportive activities which do not compromise either party or their relationship with other parties. Each party was assigned specific roles in the MoU. WUSC provided a consultant who conducted an assessment of activities of Ghana EITI members and the Multi-Stakeholder Group (MSG) and engaged communities where Ghana EITI members were operating. WUSC also facilitated the capacity building training for all Ghana EITI members, enhanced their capacity and strengthened gender policies in the extractive sector.

Ghana EITI also played a significant role in the development of the gender equality policy for stakeholders in the extractive sector. Ghana EITI, through their National Secretariat, liaised effectively with the project team and consultant promptly throughout the implementation period of the project, especially during the MoU phase. Ghana EITI members and the Multi-Stakeholder Group participated fully in the data collection phase, provided valuable input to the consultant and participated in the validation and training engagements during the development of the policy.

Ghana EITI had been an active collaborator in the implementation of the WAGES project from the outset. Ghana EITI was represented at the National Advisory Committee (NAC) of the project by the Secretariat's Coordinator throughout the period of the project. This representation afforded them an opportunity to make inputs to the project's annual work plans and budgets, served as a resource during multi-stakeholders' engagements and helped deepen strategic case studies. Under the MoU, Ghana EITI provided input during the assessment phase of the policy design and participated fully in the validation and capacity-building engagements of the multi-stakeholders. Participants to the engagements also agreed to fully implement recommendations contained in the policy.

### ***Improving mineral royalties and revenues management***

Mineral royalties and revenues continue to play a significant role in the development of mining communities despite the weaknesses in the administration of the funds. Governments across the project countries receive these funds in the name of the mining communities. The project helped to facilitate dialogues between diverse actors in government, civil society, community members, and mining companies.

In Ghana, the project supported a development of a roadmap for enacting regulations for the MDF 2016 (Act 912) and supported the capacity building of Local Management Committees of the Mining Community Development Schemes. In Guinea, the project worked with Ami Camara to reframe the royalty policy of Guinea to allocate at least 30% of the mineral royalties to women- and youth-led businesses. The Burkina Faso team worked with public agencies to facilitate the allocation of 32% of royalties to support municipal budgets in the implementation of their mandate.

### ***Roadmap for the delivery of MDF law and capacity building for Local Management Committees in Ghana***

While Ghana has a long history of mining minerals, many reports, and especially those published by Ghana EITI, outlined some of the challenges surrounding the utilization of mineral royalties at the community level which largely results from weak alignment between revenues

collected and utilization, the weak planning around mineral revenues, the delays and inadequacy in the release of mineral royalties by central government, inadequate systems to support traceability, lack of accountability, corruption, and the attendant challenges associated with resource revenues in general.<sup>4</sup>

To address some of these challenges, the Government of Ghana in 2016 enacted the Mineral Development Fund Act 2016 (Act 912). The Act, among others, aims to provide financial resources for the direct benefit of mining communities, a holder of interest in land within mining communities, a traditional and local government authority within mining communities, and an institution responsible for the development of mining in Ghana.<sup>5</sup>

To help operationalize the Act, the WAGES Project, in collaboration with the Mineral Development Fund (MDF) Secretariat, the Star Ghana Foundation and Centre Extractives Development in Africa (CEDA), organized a National Conference on the MDF law, which provided a roadmap towards the development of guidelines for the establishment of the Mining Community Development Schemes (MCDS). The guidelines served as a framework for the establishment of MCDS in 18 mining districts by March 2022. The partnership with the MDF Secretariat began with a representation of the Secretariat in the National Advisory Committee (NAC).

For the MDF Secretariat, the most notable impact of the WAGES project is its support for the implementation of the MDF law, at both the national and community levels. The promptings on implementation gaps, the facilitation of stakeholder engagement on MDF implementation, and the various skills development initiatives at the local level, have contributed immensely to efforts at ensuring that mineral royalties make a positive impact on local economic development.

The Secretariat further acknowledged the result of the collaborative engagements:

*The project has been supportive of the creation of 18 Mining Community Development Schemes so far, with the project providing capacity development training in the areas of community development planning and strategic investments. The MDF Secretariat is so far pleased with the investment decisions being made by many of the MCDS, including that of Prestea-Huni Valley Municipality (PHVM).*

In Guinea, the WAGES project worked with two Mining Funds to support the development of businesses developed by women and young people. These two Funds set up by the government played complementary, but separate roles in ensuring beneficiaries receive support for their activities. These funds are the National Local Development Fund (FNDL) and the Local Economic Development Fund (FODEL). The funds were implemented by the municipal authorities in the Boké Prefecture. While there was a high level of participation in the administration of local municipalities, leading to increased participation of women and youth and accountability, the administration of the Funds was challenged due to very limited expertise in the management of local economic development interventions. There were also questions related to the economic policy formulation, beneficiary selection, and delivery of activities from community members.

In Burkina Faso, the project supported the efforts of civil society organizations at the national level to participate in the national dialogue. The action of the project in this area was to support a framework for consultation and action of CSOs involved in mining governance. The project further collaborated with CSOs to draw a roadmap that made Local and

Municipal Development Funds (LMDF) more accessible to local communities through a review of the LMDF decrees and to become more accountable.<sup>6</sup>

### **Chambers of Mines in Ghana, Burkina Faso, and Guinea**

The WAGES project worked actively with all three of the Chambers of Mines in project countries. The project further collaborated with select mining companies operating in the project communities. In Ghana, Golden Star collaborated with the WAGES Project since its inception to sensitize communities about local procurement opportunities, the importance of standards in the industry, and sound business practices.

### ***Improving business finance and technical skills through public and private collaborations***

One of the major pillars of the WAGES project was the economic empowerment of marginalized women and youth in extractive communities in West Africa. The project stimulated opportunities for women and youth and supported the economic growth of local communities. This was done through working collaboratively with both public and private stakeholders using a multi-stakeholder approach to achieve the results.

### **Outcomes**

The Social Welfare Department observed that about 70% of the expectations of the project have been met. The knowledge products, such as the development of an environmental protection plan for the Municipality, a Gender-Based Violence Sensitization tool kit currently being used by the department, a Local Economic Development (LED) strategy for the municipality, a Local Government tool kit, and a youth plan, among others are useful. A clear deficit in the project's interventions, however, is the lack of resources for the implementation of some of these tool kits, plans, and strategies.

Multi-stakeholders' engagements across the three countries resulted in the delivery of many outcomes such as:

- Delivery of training for over 2000 stakeholders; mainly youth on entrepreneurship, market development, gender equality and environmental sustainability.
- Played a key role in the preparation of a roadmap for the development of regulations for Ghana's Mineral Development Fund (MDF) and the creation of district-level MDF Monitoring Committees.
- Supported the development of guidelines for Mining Community Development Schemes (MCDS) to assist the MDF to disburse funds for beneficiary mining districts.
- Supported the training for MCDS Local Management Committees. This helped to strengthen Committee members' capacity in the effective discharge of their mandate.

### **Lessons Learned**

Working through a multi-stakeholder approach in the delivery of interventions in extractive areas is both practicable and challenging. Practitioners require a multi-faceted set of skills

and maturity to be successful in a multi-stakeholder environment within extractives. The expectations of each stakeholder varies and practitioners must be flexible and adaptable to appropriately align with the same.

Working with public agencies and district authorities requires patience, consistent engagement, and long-term planning to achieve results. Due to many existing stakeholder engagements, public agencies and district authorities are often slow to respond to inquiries and in undertaking joint activities.

As evidenced from the project's endline assessment data, women are mostly available to receive entrepreneurship training, adapt and apply the knowledge and skills from business development services to improve their business operations. This suggests that entrepreneurship programs targeting women are most likely to contribute to their success.

While technical and entrepreneurship training is a good start for creating Micro, Small and Medium Enterprises (MSMEs), these alone are not sufficient to ensure business success. This must be done together with tailor-made business development services and facilitating access to micro grants for it to succeed.

The signing of formal agreements in the form of Memoranda of Understanding (MoU) prior to starting any multi-stakeholder engagement with other partners worked, leading to the delivery of agreed responsibilities by all parties. Lack of formal agreements with some partners did not help in the effective delivery of the project as some verbal agreed plans were not executed.

Working with national-level public agencies requires tact to agree and follow through with agreed schedules as most of them engage with diverse stakeholders, thereby affecting their plans. Early discussion and planning of activities helps to deliver within timelines.

## **Conclusion**

The use of MSE's approach in the delivery of the project's activities was key in the implementation of the WAGES Project in Burkina Faso, Ghana, and Guinea. The engagement of public and community actors, private companies, and civil society was instrumental in the achievement of the project's outcomes. While stakeholders had convergent views on most of the subjects that came up for discussion, there were divergent perspectives regarding strategy, plans, and sustainability mechanisms throughout the implementation phase; not only among the different multi-stakeholders but also project staff. All these perspectives contributed to a meaningful sustainable mechanism of the project interventions.

## **Notes**

- 1 Local Economic Development and Growth Strategies for Wassa East District and Prestea-Huni Valley Municipality.
- 2 Mining Social License and the Community Benefits Agreements approach: What prospects for Ghana? WAGES - WUSC Resources (see <https://resources.wusc.ca/project/wages>).
- 3 Objectives Of Ghana EITI (gheiti.gov.gh): See [https://gheiti.gov.gh/site/index.php?option=com\\_content&view=article&id=83&Itemid=60](https://gheiti.gov.gh/site/index.php?option=com_content&view=article&id=83&Itemid=60).
- 4 National Conference on Mineral Development Fund (Act 912) (wusc.ca). See <https://resources.wusc.ca/wp-content/uploads/2019/12/National-Conference-on-Minerals-Development-Fund.pdf>.
- 5 Mineral Development Fund Act 2016 (Act 912). <https://mlnr.gov.gh/wp-content/uploads/2019/06/Mineral-Development-Fund-Act-2016-Act-912-1.pdf>.
- 6 WAGES REGIONAL FORUM 2021(Summary Report) - WUSC Resources. See <https://resources.wusc.ca/wages-regional-forum-2021summary-report/>.

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# ENERGY TRANSITION AND INDIGENOUS COMMUNITIES IN CHILE

## Integrating Meaningful Stakeholder Engagement and Energy Justice

*María Figueroa, Cristián Flores and Nicolás Silva*

### Introduction

The deployment of low-carbon and new renewable energy technologies is rapidly increasing worldwide, supported by financial resources and political backing for green energy transition projects. This trend is creating a growing demand for land for the installation of massive renewable energy projects such as solar and wind and for the extraction of critical minerals needed to produce low-carbon technologies. The growing demand will continue to rise as countries seek to limit carbon emissions and meet Paris Agreement goals to have a chance of keeping average global temperature increases below 1.5°C (IPCC, 2022; IEA, 2023). Many countries also promote green transition-related projects as part of their efforts to achieve sustainable development goals seeking to leave no one behind (UN, 2015). Considering the scope and fast pace of the energy transition, particular research attention is being directed to assessing the impacts on the peoples, resources, and ecosystems of extraction of critical minerals such as nickel, copper, lithium, and cobalt in countries as diverse as Indonesia, Chile, and DR Congo (Sovacool, 2021; Zografos & Robbins, 2020; Flores & Alba, 2023). An aspect that has been overlooked is whether the implementation of existing regulatory participatory stakeholder engagement instruments in energy transition projects can produce meaningful and just participation that is attentive and respectful of the status and vulnerabilities of Indigenous people, while simultaneously managing the pressures associated with the expansion of industry activities for the green transition.

Numerous studies and practitioners are raising the concern that the low-carbon energy transition should avoid perpetuating and exacerbating existing inequalities and negative socio-environmental impacts. They propose that the energy transition needs to be a just transition (JT) oriented towards achieving and sustaining energy justice (Jenkins, et al., 2017; McCauley & Heffron, 2018). They emphasize that energy-related decision-making processes ought to engage all stakeholders, taking their views seriously and with a fair distribution of benefits and burdens, responsibility, and exposure to related risks (McCauley et al., 2013).

These just transition approaches, which are widely disseminated in academia, have also been criticized for being detached from international political and economic realities and for being difficult to operationalize in practice (Ayllón & Jenkins, 2023).

The importance of stakeholder engagement is also widely recognized as part of responsible business practices, including risk-based due diligence processes set out in leading global guidance instruments (OECD, 2017; UN, 2011). Despite their limitations (Fletcher, 2017), these instruments serve to guide and promote the identification and participation of diverse affected stakeholders and their human rights impacts, and they delineate the scope of what is conceptualized as meaningful stakeholder engagement (MSE) (Buhmann, 2023). MSE implementation requires genuine consideration and integration of the needs, views, and concerns of affected stakeholders into companies' decision-making from the early stages of project planning to the implementation and monitoring, and throughout the entire policy and project lifecycle (Buhmann, 2023).

This chapter examines the extent to which integrating the ideals and concepts of energy justice and meaningful stakeholder engagement can contribute to promoting the inclusion and recognition of affected, vulnerable, and often-ignored stakeholders in energy project decision-making processes. The chapter first compares the two approaches to highlight what complementarities exist between the two that contribute to filling in relevant areas and to explain why it is important to take an integrated approach. Secondly, the chapter demonstrates the implementation of this integrated approach by examining two green transition projects in Chile. The analysis of two cases in the Chilean context is relevant to the understanding of social engagement and stakeholder participation in a rapidly evolving energy transition landscape.

Chile is a regional leader within Latin America's context of abundant energy resources, in particular critical minerals for the energy transition. Chile is the world's largest copper producer and second-largest lithium producer (IEA, 2023). It is also the country with the highest rate of renewable energy project implementation in recent years (mainly wind and solar) (IEA, 2023). Further, within the context of rapid green project decision-making, it is a fact that most of the energy projects in Chile are being developed on Indigenous ancestral territories. Therefore, the cases explored in Chile can advance specific knowledge to identify opportunities and challenges for meaningful participation; they can help highlight tensions and even potential human rights violations in engaging Indigenous communities (IC) in the decision-making process. This chapter addresses the following research question:

To what extent do current Chilean and international legal instruments ensure that the implementation of green projects meaningfully engages stakeholders, promotes energy justice, and fully respects human rights in participation and consultation practices involving Indigenous communities?

The chapter follows an interdisciplinary approach combining environmental politics, procedural law assessments, and energy-environmental justice approaches. In terms of theory, the analysis combines elements from energy justice and MSE into an integrated approach. Empirically, a mixed-method approach assists in the assessment of official sources and the decision-making processes within the Chilean Environmental Impact Assessment System (SEIA in Spanish) in two distinct green energy project implementation cases: lithium mining projects in northern Chile and the successive implementation of wind energy projects located



in the southern and mostly Indigenous-populated regions of the country (Biobío and Araucanía). The data includes semi-structured interviews performed face-to-face and online with key informants from the government and Indigenous community representatives. Interviews were conducted between 2020 and 2023. Official secondary sources consist of public project-related and other documents, such as Chilean laws and decrees regulating participatory interactions between private developers, public agencies, and Indigenous communities. A review of these sources helped determine existing Indigenous rights and review the results of environmental impact assessments of energy and mining investment in the projects considered.

The remainder of this chapter is organized as follows: First, we summarize the literature on the challenges to the meaningful engagement of Indigenous communities in Latin America's energy transition; and it formulates an integrated approach for the assessment of cases in Chile, combining dimensions of the energy justice and MSE approaches; Then, the following section examines how national and international regulatory instruments to protect Indigenous participation and consultation apply in the Chilean case; Below, we describe and analyze the level of inclusion of Indigenous communities in decision-making processes for the two case studies on wind energy and lithium projects in Chile; In the final sections we discuss the key challenges and opportunities for improving meaningful and just engagement dynamics in Chile, to close by offering some concluding remarks.

### **Just engagement in energy transition projects**

Producing, storing, and distributing energy requires the implementation of large-scale projects with multiple environmental and social impacts. In many world regions, new renewable energy projects – including wind, solar, biofuels, and extraction of critical minerals for green technologies – are being planned or developed on Indigenous and vulnerable people's territories (Owen et al., 2022). This also applies to the Latin American context (Garnett et al., 2018). In many areas, willingly or not, Indigenous communities find themselves on the frontline of project implementation. Over time, the pressures to participate may produce community tensions and divisions. Some Indigenous communities feel that they are ready to negotiate their position, others feel at times forced and experience more difficulties, and as a result they are often divided and in a position of vulnerability in terms of how to engage. Critical studies on the energy transition highlight that the engagement of Indigenous communities in decision-making processes and green project implementation is often limited and inadequate; they document that decisions and projects are being carried out at times without proper or in-depth community consultation, and social validation or consent of Indigenous peoples, affecting their human rights and traditional means and ways of life (Dunlap, 2018; McGregor et al., 2020). These studies also report numerous instances of land grabbing, forced evictions, the relocation of Indigenous communities, and other disproportionate burdens compared to the promised benefits offered to the affected communities (Carruthers & Rodriguez, 2009; Forget & Bos, 2022).

In response, studies that follow the energy justice approach propose that the participation of Indigenous peoples in decision-making processes needs to be further promoted and strengthened in ways that consider their relational and community worldviews and knowledge systems and that can help influence the design, implementation, and management of related projects (Blaser et al., 2004; Sovacool et al., 2023). The authors in this chapter agree with these scholars in that a fundamental element to achieving meaningful engagement of

Indigenous communities is respect for their right to self-determination and adequate implementation of the right to Free, Prior, and Informed Consent (FPIC) because that would allow Indigenous communities to have greater say over resource development projects, including renewable energy (Dunlap, 2018; Sovacool et al., 2023).

The energy justice approach is firmly rooted in the realization of procedural, distributional, and recognition justice dimensions (Jenkins et al., 2016). Only these three dimensions are central to the integrative approach proposed by this chapter. However, a growing number of scholars are arguing that Indigenous energy justice requires going beyond these three categories (Mang-Benza & Baxter, 2021; Ramirez et al., 2022; Sovacool et al., 2023). This chapter emphasizes that even when considering only three dimensions of justice, there is a significant contribution to the understanding of why meaningful and justice-oriented engagement needs to be carried out together in practice. About the dimensions: the *procedural* aspect relates to decision-making procedures and their instances of participation and engagement with communities in non-discriminatory ways, local knowledge mobilization, disclosure of information, and institutional representation; the *distributional* aspect relates to the unequal allocation of costs and ills and their associated responsibilities; and the *recognition* aspect relates to the recognition of segments of society and perspectives rooted in social, cultural, ethnic, racial, and gender differences that have historically been affected or ignored (McCauley et al., 2013; Jenkins et al., 2017). These energy justice dimensions are relevant and should apply not only to energy projects per se but to all mitigation measures and their value chains (Sovacool, 2021).

In this chapter, we integrate the two approaches aligning the three general procedural, distributional, and recognition energy justice dimensions with the key global guidelines on MSE. The integration helps focus on substantive elements of just participation and helps establish a clearer understanding of meaningfulness in stakeholder engagement. Aligning the two approaches makes it clear why achieving MSE requires going beyond compliance with legislative requirements applicable to formal consultation processes. The energy justice questions highlighted in Table 24.1 guide the chapter's analysis of the Indigenous communities' engagement in the green energy project cases in Chile.

### **Overview of relevant soft and hard law legal instruments**

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is non-binding (soft) law. Still, it is an essential international instrument for the promotion and engagement of Indigenous people. It recognizes, among other rights, the right to self-determination and to free, prior and informed consent concerning legislation, measures, and projects that may impact these communities. The most critical instrument for the meaningful engagement of and with Indigenous peoples is the Indigenous and Tribal Peoples Convention (No. 169) adopted by the International Labor Organization in 1989. Fifteen of the 24 nations that have ratified this convention are from Latin America, making it a regional legally binding and mandatory procedural requirement. ILO Convention 169, among other fundamental issues, explicitly establishes the duty of states and the consequent right of Indigenous peoples to be consulted in advance and good faith with the objective of achieving agreement or obtaining consent when legislative or administrative decisions made by states may affect them directly. It also promotes the right for the affected people to decide their priorities in the formulation, implementation, and evaluation of national and regional development plans and programs.

Table 24.1 Integrating energy justice and MSE approaches to define essential questions for just participation of Indigenous and vulnerable communities

<i>Environmental and Energy Justice Dimensions or Tenets (McCauley et al., 2013; Jenkins et al., 2016)</i>	<i>Meaningful Stakeholder Engagement (Buhmann, 2023) Supported by International Agreements on Indigenous Rights (UNDRIP, 2007, ILO 169)</i>	<i>Energy Justice as ‘policy tool’ (Jenkins, et al., 2017; Williams &amp; Doyon, 2019)</i>
<b>PROCEDURAL</b> Characteristics of decision-making procedures: who is involved and has influence.	Participation and consultation rights Includes bottom-up perspectives from the early phases of project design, screening, and scoping up to the follow-up phase. Interactive process and an outcome, not an event. Beyond formal consultation.	<i>Presence or absence of inclusion mechanisms?</i> <i>Does decision-making engage stakeholders? In what way and about what?</i> <i>Does decision-making engage stakeholders in a non-discriminatory way?</i> <i>Are there power asymmetries between stakeholders?</i> <i>Do stakeholders have adequate capabilities to participate?</i>
<b>DISTRIBUTIVE</b> Distribution resources, harms, and risks.	Can those actually or potentially affected participate in and benefit from the Management of land and resources in the territories they occupy, or eventually receive just compensation for the damages or losses experienced with the proposed activities?	<i>What resource is to be distributed, and who is affected?</i> <i>Presence or absence of knowledge on socio-environmental impacts assessments and policies?</i> <i>Presence or absence of community benefits or compensatory mechanisms?</i> <i>Presence or absence of planning or siting tools?</i>
<b>RECOGNITION</b> Who is acknowledged and who isn’t.: Who is being ignored or misrepresented Right to self-determination - including recognition and FPIC	Takes departure in, account of, and responds to the needs for data, explanations, and discussions based on the concerns, needs, and livelihoods of actually or potentially affected people, from their own perspective Understanding of impacts from the perspective of those at risk, or affected Genuine, no tick boxing	<i>Presence or absence of legal instruments to recognize and protect vulnerable or Indigenous peoples’ rights?</i> <i>Are values, knowledge, and motivations from local or Indigenous communities being integrated or considered?</i> <i>How are cultural, and knowledge processes, colonial legacies, previous conflicts, or existing inequalities considered?</i>

Source: Own elaboration from references in table.

Even though ILO Convention 169 recognizes the right of Indigenous peoples to self-determination and FPIC, various authors have noted limitations in the ambiguous way the convention frames the notion of ‘consent’ and consider that it does not establish any binding power for the inclusion of community views (Morris et al., 2009; Walker & Urkidi, 2017). In practice, these limitations, and the flexibility that the convention gives to each state party to

enforce its provisions, have allowed states, like the case of Chile will show, to refer within their domestic legislation to a process of ‘prior consultation’ that does not fully recognize the need to obtain the consent of affected populations (for example, consultation does not give the right to veto) (Morris et al., 2009; Walker & Urkidi, 2017). Beyond these limitations, the participatory rights recognized in instruments such as UNDRIP and ILO Convention 169 are seen as the baseline for the corporate responsibility to respect human rights in intercultural contexts.

In the case of Chilean domestic law, the most relevant regulations regarding citizen participation and prior Indigenous consultation were introduced with the approval of the Environmental Bases Law in 1994. The law established the Environmental Impact Assessment System (SEIA) applicable to investment projects, today managed by the public agency Environmental Impact Assessment Service. This service unit determines the specific types of projects that are required to be submitted to the SEIA. Two categories are defined depending on the impacts of the project: an environmental impact assessment, and an environmental impact statement. The environmental impact assessment applies to projects that involve, for example, health risks, adverse effects on renewable natural resources, and resettlement or significant impacts on the systems of life and customs of human groups. When projects are evaluated as not generating these effects, the decision is made that only an environmental impact statement needs to be submitted. One of the most significant differences between these two categories is that processes to enable public participation are mandatory only for the impact assessment and not for the impact statement.

Chile’s Environmental Bases Law does not establish mandatory instances of early participation, indicating that these are voluntary. In general, citizen participation under the SEIA is carried out after the project’s public presentation and not before. The practical form of this participation considers granting access to project information to all citizens, the possibility of elaborating observations, and obtaining a well-founded response from private developers. The Environmental Bases Law also contemplates the right to file administrative and judicial claims against the Environmental Qualification Resolution – this is the official document that rejects or approves the implementation of the project – if it is deemed that an appropriate response to citizen observations has not been given.

This environmental legislation must be understood in conjunction with the duty/right to prior Indigenous consultation – and not consent – established in ILO Convention 169, which was ratified by Chile in 2008. The implementation of the convention (through Decree No. 66 of 2014) has limited the obligation to open prior consultation within the SEIA somewhat in practice. This is because: (i) the duty to consultation only applies to projects undergoing environmental impact assessments and not to impact statement processes; (ii) only regarding Indigenous groups recognized and registered under the Indigenous Law – under the legal structure of communities and associations – who are exclusively and directly affected; and (iii) only concerning certain specific types of impacts, such as the resettlement of human communities or significant alteration of the systems of life and customs of human groups; location in or near populations, resources, and protected areas; alteration of monuments, sites with anthropological, archaeological, historical value and, in general, those belonging to the cultural heritage. The determination to open the process corresponds to the SEIA, once the project has been submitted, and the decision is based on the information provided by the project owners.

A necessary clarification before proceeding with the analysis is that Indigenous communities and associations are not homogeneous units. Indigenous communities are here approached

giving attention to the variety of community groups converging within and between divergent positions and elements of both resistance and negotiation about mining and other resource-extractive economic activities promoted by private actors and the state. Far from essentializing Indigenous communities, this chapter sees Indigenous communities as functional political organizations that face simultaneous high societal risks. One of these risks is that of becoming commodified structures or functional units in unequal forms of engagements with extractive industries, where the value of their participation is primarily about what can be transferred and, what is an acceptable perception of compensatory monetary exchange for access to land and other resources (Romero-Toledo, 2019).

### **Case assessment: Indigenous community engagement**

This section analyzes two cases of affected stakeholder and Indigenous community participation in green energy project implementation: the development of wind energy projects in southern Chile, and the case of lithium mining in northern Chile. After a short introduction to each case, the analysis follows a structure addressing key energy justice dimensions and key questions highlighted earlier. For each case, the analysis discusses the following dimensions and questions: (i) *procedural* presence of general inclusion mechanisms, stakeholder engagement, and their capacities to engage; (ii) *distributional* resource use and distribution, who is affected, and presence of compensatory mechanisms; (iii) *recognitional* legal instruments recognizing vulnerable communities, integration of knowledge, values, and motivations of Indigenous communities.

### ***Wind farm projects in Biobío and Araucanía regions***

Chile's energy transition has been highlighted as an example of a relatively successful accelerated energy transition process in terms of the rapid changes to its electric generation matrix (Flores, 2020; Simsek et al., 2019). New regulations and policies enacted by the country since 2015 allowed competitive renewable generation energy companies to enter the market (Allain & Madariaga, 2020). Policies promoting renewables in the short and medium terms explain the increase in installed net new renewable capacity (mainly wind and solar) from 442 MW in 2009 to 14,011 MW in 2023, or 36.1% of the electricity generation matrix (ACERA, 2023). These policies were complemented by a commitment to a long-term goal of 70% renewable energy by 2050. Despite the remarkably fast uptake, by 2023, the country's energy transition is still in the early stages, with most of its energy matrix relying on thermal plants, coal (18%), and natural gas (25.2%) (ACERA, 2023). This context highlights the pace and scale of the expansion of renewable energy projects the country is envisioning.

At present, the bulk of Chile's renewable energy development efforts are concentrated in two areas: the northern desertic Antofagasta and Atacama regions and the southern regions of Biobío and Araucanía (ACERA, 2023). The northern Atacama Desert is one of the strongest solar radiation regions in the world and is a desertic coastal area with resourceful winds. The southern regions of Biobío and Araucanía have strong winds and fair solar radiation, which, together with a high hydroelectric capacity potential, has defined the area as the destination for significant renewable energy investments. In these two regions, renewable energy projects have been implemented at an unprecedented speed and scale. According to the SEIA database, growth has been significant. Since 2013 and over a decade, at least 48 wind farms and 41 solar plants have been presented, assessed, and approved for construction.

This marks a major shift from the slow progress seen in the past. Focusing on wind energy, a total of 28 projects are large-scale infrastructure wind farms, defined as those within a scale of investment ranging between US\$118 million to US\$500 million (SEIA database [www.sea.gob.cl](http://www.sea.gob.cl)).

*Procedural elements*

Many of the renewable energy projects that have been approved in Chile are situated in the southern designated wind resource areas. These regions also have a significant number of Indigenous Mapuche communities. As a result, the Mapuche communities have become a key stakeholder in the process of identifying and implementing new renewable energy projects in these areas.

Once permitted, the construction phase of large wind farms can last between 18 and 24 months, a period in which projects disrupt the lives of the local communities and households, and also living conditions in general. The local population and Indigenous communities may experience damaged bridges, interruptions to public services, and sometimes communal or local roads rendered unusable for long periods. Likewise, these communities are certain to experience an influx of people from the outside and an increase in vehicular traffic, noise, and air pollution, among other common impacts, during construction phases. Moreover, the construction of consecutive wind farm projects in a specific wind corridor entails years of significant impacts for the locals. According to this chapter’s fieldwork, most of these impacts were not properly communicated in advance to affected communities in both Biobío and Araucanía regions in southern Chile.

Through the analysis of procedural evidence on the participation of Indigenous Mapuche communities, it was found that, in most of the large-scale renewable energy project decision-making processes, the use of environmental instruments, such as environmental impact statements, was preferred. These instruments require little to no stakeholder consultation. While the Chilean Ministry of Energy has elaborated community relationship guidelines or standards, to date implementation remains voluntary and with no actual enforcing mechanisms for private sector decision-making. In this sense, the energy transition policy conditions favored rapid capital investment deployment competition between private renewable energy developers, and readiness to take advantage of the new ‘market’/regulatory conditions. Table 24.2

*Table 24.2* Renewable energy projects approved under Chilean environmental legislation between 2013 and 2023 in Biobío and Araucanía regions, Southern Chile

<i>Technology Type</i>	<i>Projects’ Quantity</i>	<i>Total Estimated Investment USD MM</i>	<i>Environmental Assessment Instruments (EIS/EIA)</i>	<i>Free and Prior Indigenous Consultation under Chilean legislation</i>
Wind Farms (above 100 USD Million by project)	28	7026	22 EIS / 6 EIA	4
Photovoltaic (PV)	41	409	41 EIS / 0 EIA	0

*Source:* Own elaboration from Chilean SEIA database, [www.sea.gob.cl](http://www.sea.gob.cl)

shows that an important number of renewable projects were not subjected to full environmental impact assessments (EIA), but to the less rigorous environmental impact statement (EIS) process, which does not require public involvement.

In addition to requiring no public participation, the decision to implement EISs assumes that no significant impacts have been identified, implying that no prior consultation according to the ILO Convention 169 was considered necessary for these projects. During the last decade, out of a total of 28 wind energy investment projects implemented in the Biobío and Araucanía regions, 22 were submitted through EISs, and no formal environmentally regulated stakeholder participation was performed. Of the remaining six wind projects that underwent a full environmental impact assessment, only four involved prior consultation.

The use of the environmental impact statement tools translated into a lack of citizen participation and the implementation of prior consultation. This restricted the participation of Indigenous people in these processes. Indigenous community representatives describe the situation as follows:

... The responses from public agencies are practically null because they abide by what the legislation is... Then you have to resort to the willingness of developers, the company, or the company's owner, which is what the Environmental Impact Assessment Service (SEIA) says... So everything depends on the owner (private developer) ...

(Interview Wind 1: Mapuche Indigenous community representative.  
Biobío region, southern Chile)

#### *Distributional elements*

Deficient and limited distributional compensatory measures are also common practices confirmed by the evidence review of the various project implementations. The lack of participation by Indigenous Communities (ICs) in decision-making processes has resulted in minimal social and environmental compensatory measures being taken. This raises the question of whether the participation of ICs is necessary to ensure the uptake of compensatory measures. Further research is needed to explore this topic, as it has not been investigated in this chapter. Even when compensations could be anticipated, concerns can be raised about how they are being calculated and who and what is included. Compensation estimation and distribution can lead to divisions among the interested parties. The private logic used to site new energy projects and calculate compensations favors locations based on resource potential and inputs in a cost–benefit analysis of investments. In these estimations, the cultural value of significant indigenous religious meanings or natural land sites is not properly considered. This creates a compensation and distribution flaw, which, combined with unilateral site determination, demonstrates a disregard in accounting for the real impacts and losses experienced by local and Indigenous communities.

Due to the weak capacities manifested by the Chilean environmental regulatory bodies during this accelerated stage to enforce measures on private developers, decisions to plan compensations would rely solely on the developers' criteria and motivation, accentuating the asymmetrical situation and compensation distributional flaw. The significance of this asymmetry is reflected by a Mapuche Indigenous community representative as follows:

If the owner (private developer) says 'Excuse me, we are going to remove this wind turbine from here because we really don't want to interrupt,' or 'we don't want to affect

your prayer or your ceremony,' it would be ok... But, we have not encountered that, and we do not have a solid and robust tool that forces private developers to gain a minimum of conscience and motivates them to respect our culture.

(Interview Wind: Mapuche Indigenous community representative.  
Biobío region, southern Chile)

Finally, Indigenous and local communities have faced years of intense construction due to the many wind farms that have been built or which are under construction. When each wind farm takes between 18 and 24 months to build, Indigenous and other local communities are facing nearly ten years of continuous disruption. Construction disturbances compensations are unaddressed under Chilean environmental regulations. The evidence gathered during the analysis period for this chapter indicated that only a few local communities and indigenous organizations initially arrived at beneficial agreements with private developers in connection with the rushed implementation of the large-scale wind projects approved. The reality is that Indigenous and other local communities can expect the disruptions to continue as other wind farms are planned in nearby areas.

#### *Recognitional elements*

The realization of large-scale wind projects in southern Chile during the last decade has followed patterns characterized by a lack of procedural and distributional justice, with no engagement with or recognition of Indigenous communities as either rights-holders or affected stakeholders. In terms of recognition, the Mapuche Indigenous communities have endured a historically conflictive relationship with the Chilean State, dating back to the 19th century (Bengoa, 1999; Andrade, 2019). During that period, almost all the territories concentrating Mapuche Indigenous peoples and their lands were registered as state-owned lands, and the Indigenous population was settled in lands registered as official reductional properties created by the Chilean State and designated in documents called in Spanish “*Títulos de Merced*” (Bengoa, 1999; Andrade, 2019). Mapuche communities suffered continued repression during the authoritarian period of Augusto Pinochet’s dictatorship. Noticeably, this led to land acquisition by the Chilean forestry industry, which today still owns most of the ancestral Mapuche lands in the Nahuelbuta mountain range in the Biobío and Araucanía regions, while under newly democratically elected governments during the 1990s, Mapuche-Pehuenche communities faced significant socio-environmental conflicts related to hydro dam projects in the upper Biobío river (Carruthers & Rodríguez, 2009). On these conflicted land areas, which are still being claimed by Mapuche Indigenous communities, a number of large-scale wind farms are currently being planned.

Since these are already disputed lands, private wind project developers seem to have underestimated the Indigenous communities’ capacities to respond to the location of their projects on some of these territories. These restrictions are distinctly observable in the coastal wind resource area in the Biobío region (Arauco Province), where conflicts between Mapuche communities and the forestry industry have been particularly intense and violent. Consequently, in this area, almost no projected or even approved wind farms have been built.

It is unclear why only soft regulation, in the form of EIS, was used during this period instead of the stronger environmental legal tools. Two possible interpretations could be: either the state lacked the manpower or knowledge to evaluate the significant environmental and social impacts of renewable energy at this initial stage, or the government was determined



to rush the opening to all renewable energy investments with no explicit recognition of the social impacts. Either way, the evidence shows a lack of recognition during this initial implementation phase that has had a damaging effect and is creating significant obstacles for renewable energy projects moving forward in some parts of these regions.

Lack of recognition has accumulated historically, and the legacies of previous conflicts only add to the unresolved tensions today. An Indigenous community representative explained this as follows:

The forestry industries were the first invaders. We don't have the land because they took it away. They have transformed the entire territory that was once fertile, productive farmland... and transformed it all into pine and eucalyptus forests... between companies. They are all related... They are siting the wind turbines on their large expanses of forestry property; the business is being done with them... most energy companies are settling with the forestry companies. They are protecting... their economic interests, to the detriment of the quality of life of all the people who live in the surrounding areas.

(Interview Wind 1: Mapuche Indigenous community representative.  
Biobío region, Chile)

To summarize, the wind energy development decision process targeted energy-resourceful lands and omitted the presence and engagement needed of Indigenous peoples living in those areas. In its initial stage, the process overlooked the protections offered to ICs in Chilean environmental law and its existing regulatory legislation implementing ILO Convention 169. In some cases, the awareness of Indigenous leaders of their rights is rising, and they have started organizing to pressure renewable energy investment firms and the state to perform proper environmental impact assessments and to engage with ICs in prior Indigenous consultation processes. After experiencing the multiple and relevant impacts produced by large renewable energy projects during their construction and operational periods, some ICs are now resisting and openly opposing new initiatives. Still, opportunities for improving engagement are also emerging with the state, firms, and businesses as these actors recognize that ICs are key and different stakeholders to engage with in meaningful participation.

### ***Critical minerals access: Lithium extraction***

Chile is the world's largest producer of copper and the world's second-largest producer of lithium, two critical minerals for energy generation, transmission, and storage (mainly batteries) from renewable and low-emission technologies worldwide (EC, 2023). Lithium production in Chile is: (i) based on the extraction and evaporation of mineralized groundwater (brines) from integrated ecosystems of salt flats (or "salares") and wetlands – many of them recognized as protected areas or Ramsar sites – that support unique biodiversity in one of the driest places in the world, changing their water-eco-systemic balance; (ii) located within the salt flats and wetlands located in territories recognized or claimed by Indigenous peoples such as the Atacameño/Lickanantay and Colla among others, who have made ancestral use of their lands to support their traditional material and immaterial activities.

In April 2023, the Chilean government presented its new National Lithium Strategy aiming at extending lithium exploitation through Public–Private Partnerships – with a majority state presence – promoting economic green growth, advancing value-added production, and intending to regain the country's position held until 2015 as the world's leading lithium

producer (Gov. of Chile, 2023). The government is promising that mining development will be advanced with the participation and involvement of the communities surrounding mining sites and the promotion of a fairer distribution of the associated benefits through the generation of “shared value” (Boric, 2023, p.3). At present, Chilean lithium production is only carried out in the Atacama Salt Flat, Antofagasta region, by the American Albemarle and the Chilean Chinese SQM – the two largest lithium producers in the world – under lease contracts signed with the Chilean state. Since 2020, two exploitation projects and one exploration project in the Maricunga Salt Flat, located in the Atacama region, have been approved by the Environmental Assessment Service. In addition, there are several projects in various stages of progress in other salt flats and saline lagoons in the north of the country, a situation that the government sought to expedite in the context of its lithium strategy (Gov. of Chile, 2023)

### *Procedural elements*

In the Atacama Salt Flat – where lithium mining has been taking place since 1984 – out of a total of 24 environmental assessment processes registered after the entry into force of the Environmental Bases Law in 1994, 19 have been classified as requiring environmental impact statements and only five as requiring a full environmental impact assessment. This means that in 79% of cases, it was estimated that no “significant impact” would be generated, and so the provision of information has been simplified and limited, and no instances of participation of any kind have been required. In the Maricunga Salt Flat exploitation projects, the generation of significant impacts was acknowledged on, for example, terrestrial ecosystems, heritage, landscape, and the practices of Indigenous communities, and projects were submitted to full environmental impact assessments. However, for the exploration projects, only environmental impact statements were required, and they were deemed to have no consequential environmental impacts.

When stakeholder participation through EIAs was possible, the engagement of the locally impacted Indigenous communities has been far from compliant with standards of procedural justice and meaningful engagement and reduced to the option of making observations within a deadline period after the EIA has been submitted. In the Atacama Salt Flat evaluation processes, Indigenous communities raised questions that were disregarded for formal reasons. In Maricunga the Colla, Indigenous communities linked to the salt flat presented observations as part of the public participation processes of the extraction projects, denouncing the violation of their right to Indigenous consultation, which has been not duly addressed within the SEIA (Flores & Alba, 2023).

In one of the processes (the so-called “Producción de Sales”), after Indigenous communities raised claims to the Supreme Court, the Court recognized the alleged flaws in participation, suspended the project’s environmental license and ordered the opening of a new prior indigenous consultation process with the affected Indigenous communities. In Maricunga, tensions also reached the lithium exploration projects for which environmental impact statements had been submitted, such as the one presented by the state-owned CODELCO. At present, at the end of 2023, potentially affected Colla Indigenous communities are pushing for greater involvement and respect for their rights to participation, prior Indigenous consultation, and participation in the benefits. As stated by members of these communities, “If Codelco does not live up to our demands, we can fight and go to the ultimate consequences” (Interview Lithium 1: Member of Colla Indigenous community).

Similar concerns have been raised concerning the new National Lithium Strategy, which was designed without any instances of participation and consultation with the potentially

affected ICs. The government is seeking to amend these shortcomings ex-post, but with instances of dialogue that will do little or nothing to modify the route already mapped out of opening the salt flats with the most significant mining potential to exploitation as soon as possible. In summary, both the progress of specific projects and lithium strategies and policies have advanced with slight meaningful inclusion of bottom-up perspectives and concerns about these projects and their impacts from the early stages and on an ongoing basis, and thus cannot significantly influence the associated design and decision-making process.

### *Distributional elements*

The High Andean salt flats containing the lithium reserves are in territories partially recognized or claimed as being of Indigenous ancestral use and occupied by groups that for decades have interacted and negotiated with mining operations. This fact conditions the internal disputes among and between Indigenous communities themselves and with mining companies and the state over the distribution of environmental and economic cost benefits, and the recognition of land ownership, ancestral use, and special cosmovision and relationship with the territory. (Bustos-Gallardo et al., 2021; Jerez et al., 2021; Flores & Alba, 2023). In the Atacama Salt Flat, the distributional aspects have been addressed mainly through agreements that establish the allocation of direct and indirect compensation – revenues – derived from the exploitation and sale of lithium in favor of some Indigenous communities, Indigenous associations, and local and central governments, with no further granting of power over the territory and its resources to ICs (Poveda, 2020). These contributions – in 2023 amounting to close to US\$40 million – to the development and maintenance of the local identity of the benefited Indigenous communities, have generated significant tensions and internal fractures between the various Indigenous communities and their members. These tensions are increasing in connection with the recognition extended to some Indigenous communities over others that are not part of the negotiations, the uncertain relationship between environmental destruction and economic compensation, and the lack of transparency on how the money contributions are distributed and used by the Indigenous communities (Jerez et al., 2021; Lorca et al., 2023). An example of these tensions is the legal action filed by one of the Atacamenian Indigenous communities, and accepted by the Supreme Court, to annul the company SQM's contribution distribution formula, and have it subjected to Indigenous consultation while suspending the distribution of contributions.

In the case of the Maricunga Salt Flat, where the projects are not yet in operation, one of the projects (the so-called “Proyecto Blanco” recently bought by Codelco) agreed with three Colla Indigenous communities an annual 0.3% of the sales with a minimum floor of US\$300,000 and other economic benefits. The main criticism against this agreement is that it was subscribed between the mining company and Colla Indigenous communities located outside the salt flat basin (Flores & Alba, 2023). A member of another Indigenous community emphasized:

We find it inexplicable that the company obtains the social and environmental license for the project and exploits all the water on the basis of private agreements and contracts with communities that have no relation to the salt flat and its waters (...) People get the money, buy a truck or a house, and leave; it is nature that loses. As if they didn't know that when nature loses, we all lose because we are all one.

(Interview 2: Member of Colla Indigenous community)

Other members of the Colla people are arguing that the discussion about the distribution of the contributions should include the entire Colla people and not only the “territorial Indigenous communities” of the affected salt flats, denoting the strains linked to the distributional aspects.

The distributional aspects linked to lithium mining are far from representing a redistribution of power and control of the territory and its resources in favor of local stakeholders and ICs. The power to hold property and the rights of exploitation of mineral resources are in the hands of the national state and mining companies. To date, the focus has been on the possibility of offering/obtaining nominal market compensation for potential impacts and job opportunities. This approach has deepened old dynamics of dependency and social control that often fracture the social fabric (for example, Lorca et al., 2023). The approach is being taken again in a recent example that is underway in negotiations between Codelco and Colla Indigenous communities to facilitate their projects in the Maricunga Salt Flat. The new National Lithium Strategy has consolidated this approach based on the concept of promoting “shared value”, which, to date, has focused attention on ways of finding compensatory economic agreements and that will be determined on a project-by-project basis.

#### *Recognitional elements*

In the Atacama Salt Flat, all the environmental impact assessments filed to the SEIA by the companies Albemarle and SQM were submitted before the entry into force of ILO Convention 169 in Chile. Therefore, it was argued that no prior Indigenous consultation needed to be carried out despite the observations made by some ICs during the citizen participation process. Observations made in such contexts, for example by the Atacamenian Indigenous communities of Peine and Toconao – initially opposed to the project –, emphasized the epistemic inequalities prevalent within SEIA processes, stating that

The Ancestral Communities do not have the resources or the real support (...) to demonstrate that many times, the modeling of the waters that the companies carry out in Ancestral Indigenous territories, is erroneous; moreover, the EIAs present advanced methods of technical information that are impossible to understand.

(COREMA II, 2011: n.d.)

In the case of one of the mining operations (Albemarle), the lack of state Indigenous consultation is being compensated by agreements establishing direct capital contributions (3.5% of annual sales) to some Indigenous communities and instances of dubious participatory environmental monitoring. These agreements do not correspond to proper Indigenous consultations, but have been declared as having ILO Convention 169 reference by the companies. Also, some researchers see these agreements as representing the exercise of self-determination by the Indigenous communities (O’Faircheallaigh & Babidge, 2023).

In the case of the Maricunga Salt Flat, none of the extraction projects opened a prior Indigenous consultation with respect to the Colla Indigenous communities that have demanded recognition of the ancestral use and occupancy of the salt flat, its waters, and wetlands. Therefore, as previously indicated, a recent Supreme Court decision annulled one of the company’s licenses to operate and ordered the opening of a prior consultation. This consultation is currently underway, with the company seeking to reach a direct compensatory agreement with community members. This process is far from being an instance of meaningful and just

engagement, as a member of one Colla Indigenous community explains: “After the court ruling, the company has contacted the communities and asked what we want in exchange for supporting the project... but there is no real possibility to discuss the already defined project which will be carried out anyway” (Interview 3: Member of Colla Indigenous community).

Aside from projects without adequate impact assessment processes and Indigenous consultation, most of the time, mining prospecting activities or low-scale lithium explorations are not even entering the SEIA. This means that in many salt flats, several projects are today advancing without a chance of establishing minimum conditions of engagement or recognition, procedural, or distributional justice despite the claims raised by several Indigenous communities involved. In 2022 the court accepted the appeals filed by Indigenous communities from the Atacama Salt Flat and Maricunga Salt Flat basins, claiming violation of their right to prior consultation as recognized in ILO Convention 169. A similar type of conjecture about the lack of prior Indigenous consultation is being extended today to the National Lithium Strategy in aspects such as the definition of which salt flats to protect and which to exploit, and the potential forms of benefit sharing linked to the projects, etc.

In summary, to date decision-making processes linked to the advance of lithium mining in Chile’s salt flats have happened either without prior Indigenous consultation as recognized by ILO Convention 169 or by excluding some of the Indigenous communities linked to the territories involved. This promotes a tendency – operationalized within the SEIA and today framed also in the National Lithium Strategy – to not appropriately recognize the significance of non-technical knowledge and values and of the dismissal of potential socio-environmental impacts, particularly those related to Indigenous peoples, their rights, and traditional practices and knowledge (Jerez et al., 2021; Flores & Alba, 2023). The silencing and exclusion of these actors is instituted by minimizing the importance of Indigenous perspectives in the processes and giving prominence to technical and economic considerations. To many of the local communities, Indigenous communities, and other vulnerable stakeholders without technical experience, access, participation, and opposition within the process is rendered difficult or impossible. Still, in certain cases, some Indigenous communities have persevered, resulting in the revocation of few flawed processes both inside and outside the SEIA system, and managing to improve the negotiating position of the Indigenous communities and obtaining greater recognition.

### **Meaningful and just engagement of Indigenous communities in the energy transition**

The stated ambition of the Chilean Roadmap and Energy Policy 2050 emphasized the need to strengthen the participation of local or territorial actors, including Indigenous and vulnerable communities in the definition of an energy future for the common good (Urquiza et al., 2018). However, as the present chapter has shown, the implementation of renewable energy projects has been characterized by the absence of engagement of Indigenous and local communities in territories such as the wind corridors in the Biobío and Araucanía regions, a situation that has been repeated in the case of lithium mining in the northern regions. Over time, the absence of participation and public engagement in the territorial planning of these areas has progressively become a crucial challenge. By the end of 2023, it has become clear that public acceptance of renewable energy projects and territorial saturation are acute issues to be recognized in the progress of developing the new Chilean electricity generation matrix.

Opportunities for meaningful Indigenous community engagement are plentiful, even though the situation today is dire. The new National Lithium Strategy, for example, includes promises and objectives that could improve meaningful engagement if fulfilled. Recent government announcements indicate that the implementation of the strategy will consider dialogue processes between Indigenous communities and stakeholders, with a design based on ILO Convention 169 and a process following international mining standards for stakeholder engagement (Gov. of Chile, 2023). The international mining guidelines and standards refer to environmental and human rights due diligence that could drive progress towards greater justice within the supply chains of critical minerals such as lithium. Demands are gradually being made for these standards to be used as minimum sustainability requirements in markets such as the European Union (EC, 2023). The implementation of standards will depend upon compliance and certification of “green extraction”, which, in turn, calls for respect for community rights such as self-determination. The legitimacy and efficacy of this approach may be tested or put soon at risk when new instances of (corporative) community co-optation and ‘tick-boxing’ corporate greenwashing emerge, which some NGOs and local actors have already begun to denounce.

To summarize the analysis findings aligning the three energy justice principles with meaningful stakeholder engagement approaches, the following insights from the cases provide substance to answering the chapter’s research question that follows:

- Lessons from Indigenous community engagement in wind energy in southern Chile (Biobío and Araucanía):
  - *Procedural*: Most sizable projects in the last decade have been approved by lenient environmental tools (EIS) that classify projects as being without “significant environmental and social impacts”. Consequently, most environmental assessments included neither prior Indigenous consultation (ILO 169 Convention) nor any formal or voluntary participatory processes.
  - *Distributional*: Because of the lack of participatory processes, environmental impacts and mitigations or considerations were also scarce. Economic compensations have been limited and considered minimal or insubstantial by local Indigenous communities.
  - *Recognitional*: Indigenous and other local communities have identified this lack of recognition, which has produced a generalized distrustful scenario that will impact further project permitting. Indigenous communities have realized how their exclusion from participatory processes may mean missing forms of compensation and have started to organize themselves. Conflicts have also emerged in this specific wind farm corridor.
- About IC engagement in lithium extraction in northern Chile (Antofagasta and Atacama):
  - *Procedural*: Indigenous community involvement has been restricted mainly to assessment modalities with no participatory instances through use of environmental impact statements. When participation is allowed, it takes place after the presentation of a defined project in a context marked by asymmetries of information, capacities, and knowledge about potential impacts. Public observations formally raised were omitted for formal reasons or did not receive a sufficient response within the processes.
  - *Distributional*: Has focused on the allocation of direct or indirect monetary compensations associated with mining exploitation for stakeholders defined within environmental assessment processes or in connection with specific exploitation contracts. Determination of the beneficiary groups and of the use of monetary benefits has caused great division among members of Indigenous communities and confirmed their sense of having been subjected to discriminatory practices.

- *Recognitional*: Only granted to specific communities, mainly those considered potentially and directly affected in a significant way within SEIA. These communities have no right to say no or to propose modifications to projects already approved. There is a pre-eminence of technical knowledge supplied by the project owner and no case or place for incorporation of traditional non-technical knowledge. This type of technical knowledge discussion about the project usually considers financial and corporate money flows and co-optation practices. There is internal and international pressure to open the process to a higher level of environmental, social, and governance standards and requirements regarding stakeholder relationships and involvement associated with critical mineral value chains.

### **Conclusion**

Considering this chapter's research question: *To what extent do current Chilean and international legal instruments ensure that the implementation of green projects meaningfully engages stakeholders, promotes energy justice, and fully respects human rights in participation and consultation practices involving Indigenous communities?*, the answer is as follows:

Existing international and local tools provide for a procedural approach to participation and consultation of Indigenous communities in Chile but, in practice, this approach does not ensure that Indigenous communities are experiencing meaningful engagement. The reality is one of considerable infringement of their rights and energy justice dimensions. This chapter has shown that in terms of green energy project implementation, there was an initial accelerated development frenzy for wind energy projects in Biobío and Araucanía that lacked or significantly limited stakeholder engagement and ignored the existing body of soft and hard law instruments. The private developers may have pressed to gain expediency in project implementation, and shortcutting participatory procedures, opting for the briefer and faster environmental statement tools, and evading the opportunities to perform appropriate MSE processes helped to achieve that. The practical experience of exclusion that Indigenous communities have historically experienced, and are experiencing in current green transition processes, has reinforced high levels of distrust, and entrenched the need for Indigenous communities to resort to conflict to make their voices and life concerns heard. As the case of wind projects shows, the future of project permitting approvals and Indigenous participation will continue to proceed under pressures for a fair procedure and for the distribution and recognition of justice for Indigenous communities and other vulnerable stakeholders.

As regards lithium production, to date neither top-down international soft law instruments or binding instruments, nor bottom-up hard law and concerns about impacts have been considered at the design, implementation, or monitoring stages of present mining projects. Information on the potential impacts of lithium mining is scarce and generated by mining companies themselves in their own project's evaluations. These assessments are characterized by high technical complexity and are largely inaccessible or incomprehensible to Indigenous participants within the assessment processes. Community involvement has focused on advancing limited formal stages regulated by the SEIA that are far from promoting a meaningful engagement and full respect for the right to fair and prior consultation. Also, there has been a slight tendency to incorporate voluntary direct and indirect capital contributions and community environmental monitoring as voluntary commitments. Overall, it can be asserted that the advance of lithium mining has been carried out with the silencing and downplaying of the opinions, knowledge, and cultural value of the salt flats for the

Indigenous communities. Often these communities have been pressed into accepting the uncertain impacts of so-called low-impact mining in exchange for short- and medium-term economic agreements. However, there are more instances of coordination that seek to obtain greater recognition and improve the Indigenous communities' position to negotiate better conditions.

Lithium mining, as well as renewable energy projects, are met by internal and external pressures for adoption of higher social, environmental, and governance sustainability standards—as they are part of the global green transition project that would seek to promote a more responsible economic model and achieve broad sustainable development goals. Compliance with strict and rigorous standards is a promise that has been articulated repeatedly by the current government, as well as those linked to the promotion of greater involvement and shared value with local communities (Boric, 2023). This ambition could potentially contribute to improving meaningful stakeholder engagement and energy justice in future projects if they are realized properly.

The chapter considered the case of Chile as a front-runner in Latin America's energy transition, given its high renewable and mineral potential for transition and sectoral policies that seek to move towards greater energy justice despite the regulatory limitations described before. The case examination facilitated consideration of elements of social justice, historical temporalities, and conditional market attributions from a spatial and territorial scope that has relevance to the rest of Latin America and likely other developing country regions. The energy transition in Chile is evolving and in its infancy; so far, however, it has been deeply unjust to most of the involved Indigenous communities. The hastening of decision-making processes may have left aside discussion with the communities of the degradation and destruction of their immediate environments and of the ways of cultural life they value. The results represent new forms of dispossession and deterritorialization (Sovacool et al., 2023) in material, territorial, and economic ways detrimental to the well-being and health of the Indigenous communities. Unequal knowledge and power relations expressed by Indigenous communities in the interviews carried out with Indigenous leaders and members demonstrated their heightened sense of vulnerability.

Attention to ensuring meaningful engagement of Indigenous communities in the green energy transition is a big challenge as there are concurrent political difficulties at play. The economic push from a potential “commodity” boom for critical minerals and the abundance of renewable resource sites is presenting new economic opportunities for Chile, and similarly for Latin America and many other developing country regions. The opportunity is expanding new forms of developmental imaginaries in the Global South, which can be misused politically to justify maintaining present-day inequalities, power imbalances, and the silent continuation of historical injustices toward Indigenous communities. Without meaningful democratic participation, there is a high risk of turning the green discourse into a new green-economic and socio-environmental curse. The engagement of Indigenous and other vulnerable groups in fair and open consultation needs to be reclaimed and fully exercised to create the pathway for a fair and just energy transition for all.

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# EXAMINING CHALLENGES OF TOP-DOWN STAKEHOLDER ENGAGEMENT

## A comparative study of Mining Conflicts in Southern Mexico

*John P. Hayes and Ulises Pavel Martínez Romero*

### **Introduction**

Recent legislation and best practices by both states and firms are turning to meaningful stakeholder engagement (MSE) as part of risk evaluation and impact assessments. However, as the volume's editors have argued in the introduction (Buhmann et al., 2024), there is a need to ameliorate top-down models imposed by national governments through bottom-up approaches. In Mexico, the municipal level acts as the primary governance domain where federal government policy and the bottom-up perspectives of affected communities meet to negotiate mining projects. This chapter examines the stakeholder engagements processes in two rural municipalities in Mexico where mining companies faced community opposition to their proposed projects. The chapter finds that existing public policies of stakeholder engagement, as dictated by the federal government of Mexico, are inadequate and ultimately exacerbate social-environmental conflict. The failure of MSE in Mexico and the divergent outcomes of mining resistance engage with the handbook's question of how MSE can identify and minimize risks and negative impacts, in both the short and long term, to the benefit of affected communities.

Despite the proliferation of new policies and laws to that delineate between rights-holders of commonlands and the rights-holders of subsoil minerals, the gradual rollout of a new natural resource governance policy framework from 1992 onwards has not been successful. This is reflected in Mexico's standing as host to the highest number of mining-related social-environmental conflicts in the Americas (Observatorio de Conflictos Mineros de América Latina, 2023). Drawing on the case of two rural, agrarian municipalities, the chapter argues that, for MSE to occur between firms and communities at sites of mining projects, understanding local divisions – ethnicity, farming vs. non-farming vocations, and the interactions of agrarian governance bodies and the municipality – is a crucial component of understanding how affected stakeholders negotiate with, or oppose, mining projects. The chapter also identifies the importance of the communication of information about projects to affected communities (O'Faircheallaigh & MacDonald, 2022). Unfortunately, MSE is not present in Mexico.

Using a most similar systems comparative research design, the chapter explores two cases where the affected stakeholders of mining projects – rural farmers – engaged in mining project opposition but had different outcomes. Despite both communities living under similar customary, community-based agricultural work systems and under the same federal legal framework, there were divergent outcomes in mining resistance. The study finds variance in the level of community cohesion for their anti-mining mobilizations. The local divisions at the sub-municipality level – namely, the disagreement between customary agricultural work systems and the municipal government – is the main explanation for the divergent outcome between the cases. The chapter argues that top-down MSE between firms and municipalities in Mexico overlooks the nuances of local politics and the needs of community members, mainly farmers, when they conduct MSE at the municipal level. This lack of engagement with affected stakeholders is based on the policy framework of prior and informed consent processes in Mexico, which only involve the municipal government, despite the existence of other community-level governance systems, such as community-based agricultural work systems. The lack of engagement with the customary institutions, therefore, reflects what the introductory chapter refers to as the problem with top-down engagements that can overlook nuances and specific needs emerging from the perspectives of affected stakeholders (Buhmann, Fonseca, Andrews, and Amatulli 2024). As a larger public policy consequence, the divergent outcomes show that MSE in Mexico is still deficient, based on a lack of clear-cut rules of applying principles like UNDRIP and the United Nations Business Principles into the shared laws of Mexico's Federal system.

To guide this case study research, the chapter asks: why did the community of Tlamanca, Zautla, Puebla reject negotiations with mining firms and successfully oust a mining project, while San José Del Progreso, Oaxaca entered negotiations and were unable to stop an unpopular mining project? Contrary to some of the political ecology literature on mining conflicts focused on macro theories of neocolonialism and extractive dependency, the chapter analyses legislative and public policy to show how idiosyncrasies in Mexican natural resource governance drives conflict. Drawing from a Historical Institutional (HI) approach, the chapter argues that gradual changes in federal mandates, state authority, and a pluralism of subnational governing structures create constraints for MSE to occur in the initial stages of a mine's development. HI analyses (e.g. Streeck & Thelen, 2005) can trace incremental political and policy change to specific legislation and explain why outcomes have unfolded the way that they ultimately benefit specific stakeholders. In both municipal case studies, the study provides evidence of inadequate due process in the negotiation process between firms and communities, which is rooted in the federal policy framework of Mexico.

The rest of the chapter is divided into four main analytical sections: the next section explains the context and political economy of the Mexican mining sector. The third section discusses the research design, including the theory, methods, and data collection. Next, there is an analysis of the main policies governing the mining sector which explains why, in instances of social-environmental conflict, the growth of Mexico's mining sector created the conditions at the local level for contestation between communities and mining projects. In doing so, this section also shows how the idiosyncrasies of Mexican mining policy has created a lack of stakeholder engagement between firms and municipalities. The following section offers the comparative analysis of the divergent outcomes of mining project opposition through the examination of the two case studies. The chapter concludes with an analytical discussion of how both cases reflect wider issues with lack of stakeholder engagement with Mexico's policy framework, and why the lack of nuanced understanding of the needs of affected stakeholders has led to recent

calls in 2022 and 2023 for changes to the main laws governing the mining sector's engagement with communities. Given these recent reforms, soon there will be a need for reassessments of mining-related public policies and the effects on stakeholder engagement.

The chapter seeks to situate stakeholder engagement policy considerations in the extractivism and social-environmental conflict literatures that ask why some communities are successful in project opposition while others are not (e.g., Conde & Le Billon, 2017). An important contribution of this chapter to the MSE handbook is highlighting how municipalities hold in the balance the permission or rejection of mining projects, and how they are the crucial interlocutors of stakeholder engagement between firms and communities at the beginning of a mining project. As the cases will show, the failure of stakeholder engagement in Mexican public policy means that municipal resistance when communities oppose a mining project becomes the main venue of contestation. The prior and informed consent processes that are overseen by the municipal government between mining companies and affected communities is the first line of contestation driving social-environmental conflict, which often break down in the absence of MSE. This is important to advancing the emergent literature on MSE, by providing a policy and legislative-based focus on gaps between levels of authority, which create clear shortcomings in the engagement process prior to the creation of mining projects. Both cases show that, despite the increasing nature of direct negotiations between extractive firms and communities, contestations through the venue of local political structures are central to the outcomes of natural resource conflicts. In turn, more needs to be done in Mexico to incorporate the decisions of the often-myriad of local governing structures that exist outside of the central state policy structure.

### **The Context of Mexico's Mining Sector**

High mineral prices bring opportunities for revenues generation to resource-rich countries that need investment capital and tax revenues. In Mexico, the federal government in the 1990s layered new policies with old ones to create favorable investment conditions, while not undoing politically and culturally significant Constitutional rights of popular classes. This layering has been considered a key tactic of neoliberal policy change in resource-dependent states in recent decades (Peck et al., 2010; Nem Singh & Bourgoignie, 2013). The policy landscape in Mexico during the rising price environment of the commodity super-cycle in minerals from 2000 to 2012 put local communities face-to-face with the capital-intensive interests of commercial foreign mining investors, which have been increasingly influential in Mexican politics since the neoliberal reform era of President Salinas de Gortari (1988–1994) (Paley, 2014; Tetreault, 2016). As Figure 25.1 details, under the National Action Party governments between 2001 and 2012, the total amount of mining production, measured in millions of pesos, grew almost ten times in size (Government of Mexico, 2016).

Mexico has a diversified economy, relative to other countries in Latin America, but is now abundant in mining activities. Mining now accounts for over 4% of GDP (IDA, 2020). In contrast, over 10% of Peru's and Chile's respective GDPs are based on mining. Mexico is now a top-ten producer of seventeen different minerals, including being the world's single largest producer of silver, gold (10th), and iron ore (13th) (Government of Mexico, 2020a).

The cause for conflict in Mexico is inherently tied to tensions between land rights of local populations, and investor rights. The Mining Law of 1992 strengthened the property rights of concession holders against constitutional objections by common lands holders, extended the duration of mining concessions, and granted legal precedence to concession holders over the

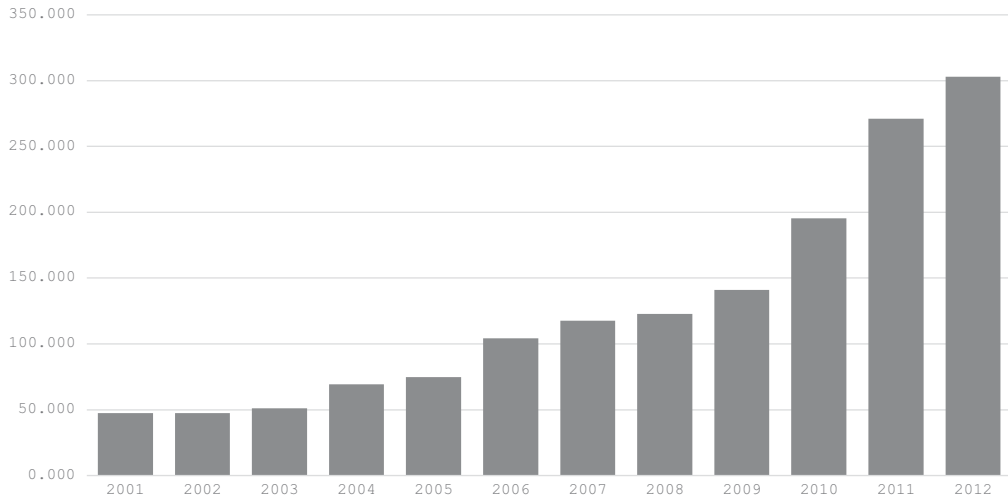


Figure 25.1 Mining Production, 2001–2012 (Millions of Pesos)

Source: Author’s own illustration using data from Consejo de Recursos Minerales (2001, 2003); Servicio Geológico Mexicano (2010, 2014)

land entitlements of *ejidos* and rural municipalities. Mining concessions are also governed by the Mining Law. Concessions are granted to firms, who are charged only 5 pesos per hectare (equivalent to roughly .25 cents USD) for the first two years and then increased to 11 pesos after ten years (about .55 cents USD) (Tetreault, 2021). These are inexpensive leases of the subsoil relative to other jurisdictions and account for only 1.2% of gross earnings by mining companies between 2005 and 2010 (Tetreault, 2021). As a result, in Mexico there has not been a post-neoliberal resource nationalism related to the harnessing of minerals for national redistribution in the 21st century, in the way that other states in Latin America have claimed (Veltmeyer & Petras, 2014). It is worth mentioning that the concessions grant rights for the exploration and exploitation of resources that are found deep in the ground, but not above the surface. This means that the concessions grant rights over the mineral wealth to an indefinite depth, but the possibility of accessing the surface on which the concessions are located will depend on who has land rights entitlements. The two resulting possible scenarios are therefore to lease land, or request and obtain a resolution of temporary occupation or easement over the required surface before the Ministry of Economy (Cámara de Diputados, 2014). This tension between subsurface rights and land rights is perhaps one of the most important elements to consider in the emergence of conflicts, as well as in their development.

Prior to 2022, the Mining Law of 1992 did not stipulate community consultation for the granting of mining concessions, which are delivered in an exclusive arrangement between the federation and the mining companies. At the municipal level, the Mining Law stipulates: “for the commencement of mining operations and works, the concession holder must obtain the necessary authorizations, permits, and concessions from the relevant federal, local, and municipal authorities” (Cámara de Diputados, 2014). The two permits that mining companies must process with the municipal authorities are installation of equipment and operation of the mining project (Cámara de Diputados, 2014). The municipality has the right to reject surface permits, but the underlying agreement for subsoil access is granted to companies by

the Federal government. Under Article 6 of the Mining Law of 1992, mining is categorized as a public utility and therefore granted preferential legal rights for land use (Cámara de Diputados, 2014). This means that mining concession holders are allowed to temporarily occupy lands in the event if commonlands holders oppose the project. This is the main explanation for why conflicts occur at the municipal level, due to fundamentally conflictive permitting processes between soil and subsoil land rights.

The increase in granting inexpensive concessions indicates that the relationship during the expansion of mining in the early 2000s is diminishing between the state and rural and Indigenous communities, because the expansion of rights and entitlements for concession holders in Mexico, like elsewhere, privileges extractive activities over other land and water uses (Bebbington & Bury 2013). Based on Article 27 of the Mexican Constitution, the collective bargaining power of communities throughout Mexico – both Indigenous and non-Indigenous commonlands – is derived from the institutional framework of the Constitution's commitment to land reform and to *ejidos* (Haenn, 2006). The outcome is that there are contradictions in the institutional makeup of natural resource governance in Mexico because the federal government still technically upholds constitutional protections for community rights on commonlands, while also leveraging that constitutional power to weaken inalienable rights of common lands to create favorable investment conditions for mining operations.

## **Research Design**

### *Theory*

Given the complexity of tracing the interactions between government institutions, industry, and society across time, comparative and HI analyses are helpful for identifying shifts in Mexico's rural transformation. Streeck and Thelen (2005) explain that different institutional changes are based on different processes of altering existing arrangements, which are conceptualized as *layering*, *drift*, *conversion*, and *displacement*. Three of these four phenomena appear in Mexico's policy changes of the 1990s that relate to land tenure and subsoil rights. Layering involves the introduction of new rules on top of existing ones. Drift entails that rules remain in place, but their impact or importance changes (usually by neglect) based on exogenous factors. Conversion occurs when some rules remain the same but give rise to new interpretations, which occurred with Article 27 of the Mexican Constitution, the redistribution law that guaranteed land to all Mexicans following the Revolution of 1917. Displacement does not appear in the Mexican context, because the Salinas Administration (1988–1994), the main policy reformist to modern land tenure and mining law in Mexico, successfully maintained all major components of the existing land rights regime while also pursuing a new political economy of resource ownership and land tenure. Instead of displacement, President Salinas introduced new legislation, social programs, and started technical initiatives housed in major ministries to individualize social provisioning and auction off components of the state (Langston, 2017; Woods, 2005). This HI typology helps to centre the policy changes that underlie the challenges in MSE in the larger context of land-based conflicts over the arrival of mining projects and its legislative scaffolding of the federal government.

Streeck and Thelen (2005) point out that “while some institutional arrangements may impose a dominant logic of action, these typically coexist with other arrangements, created at different points in time and under different historical circumstances, that embody conflicting and even contradictory logics” (19–20). The typology is pertinent to Mexican stakeholder

engagement in mining contexts because land rights now consist of these so-called contradictory logics, most of which have appeared through gradual change as municipalities have come to grapple with the competing frameworks of land tenure. Reforms to land tenure in the early 1990s created a *de jure* privatization of commonlands through a federal program to delineate individual landholdings. However, despite this change, the structures of local agrarian councils and community assembly politics in farming communities have endured, creating a conflictive institutional framework that often creates disagreements between formal municipal governments and local agrarian governance frameworks of commonlands holders. It is this idiosyncratic land tenure framework, mixed with the exponential rise of mining activity in Mexico, that has driven many mining conflicts in Mexico. The boundary-spanning nature of natural resource governance – which often involves several different policy processes, including land tenure, water rights, and environmental assessments, among others – means that conflicting rules and procedures will exacerbate and compound issues between the state, industry, and affected communities. Among these many stakeholders, differing forms of local governance are a crucial element of stakeholder engagement.

### ***Methodology***

This research builds on qualitative data collection and primary document analysis. It draws data from two main sources: first, a review of primary and secondary sources, including existing government legislation, news media, and academic articles. Second, it draws from semi-structured interviews with key informants, such as anti-mining movement leaders, spokespersons, and community leaders within the municipalities. A total of 24 interviews were conducted in person in the two communities affected by mining projects. The interviews were recorded between August 2018 and December 2019. Case selection cases began with an inductive approach of identifying fifty-eight mining conflicts in Mexico. Given the interest in divergent outcomes, the chapter employs a most similar systems design. The study chose two cases with a clear popular opposition to the mining project but experienced different results. The objective of comparing these two cases was to isolate the characteristics that could explain the different outcomes in the conflict. Table 25.1 identifies common factors between both affected communities. The key differences that help explain the divergent outcomes between the affected communities and their ability to control the outcome of the mining projects are in bold text.

### **Public Policy Issues in Stakeholder Engagement**

Mining opposition efforts by affected communities often draw upon Constitutional rights built into the institutional framework of community–land connections. In Mexico, this entails the relationship that exists between the municipal authorities and the affected community, as well as other local authorities such as the *ejido*, community assemblies, or communal boards. In rural Mexico, there are varied, often semi-autonomous labor and land management governance structures that operate within the federal system and have jurisdiction within commonlands territories, as protected by various articles of the Mexican Constitution that were ratified in the 1990s and early 2000s to guarantee the rights of pluri-national Indigenous authority (International Work Group for Indigenous Affairs, 2023). These entities are important to engage in the process of granting or rejecting mining projects. Therefore, a central issue in cases of mining resistance is cohesion within municipalities and whether stakeholder



Table 25.1 Case studies

<b>Municipality</b>	Tlamanca, Zautla, Puebla	San José del Progreso, Oaxaca
<b>Mine Name</b>	Mina La Lupe	Unidad Minera San José
<b>Mining Vocation</b>	No Mining Vocation	No Mining Vocation
<b>Farming Vocation</b>	Farming Vocation	Farming Vocation
<b>Type of Mine</b>	Subterranean Mine Shafts	Subterranean Mine Shafts
<b>Domestic or Foreign Mine</b>	Foreign Mining Firm JDC Minerals Jinduicheng (China)	Foreign Mining Firm Fortuna Silver & Cuzcatlán (Canada)
<b>Type of Minerals</b>	Gold, Silver, and Copper	Gold and Silver
<b>Community Work System</b>	Customary ( <i>Faena</i> )	Customary ( <i>Tequio</i> )
<b>Relevant Information provided to Affected Stakeholders</b>	Provided by external organization	Not Provided
<b>Community Unity or Division</b>	Community unity between Municipal government & affected communities	Community Division between Municipal government & affected communities
<b>Community Resistance Tactic</b>	Opposition	Negotiation
<b>Outcome</b>	Community shut down the mine	Community did not shut down the mine

engagement is carried out between the formal municipal government authority and affected communities, even if mining companies or the federal government are not involved.

When considering the range of opposition and negotiation among local actors, it is important to note that group cohesion is not guaranteed. A mining company might engage with the main municipal government, while avoiding consent from another local governing authority, like a customary agricultural governing body or community assembly, which risks pitting local authorities against one another. As the cases will show, this occurred in San José del Progreso, where the municipality agreed to allow mining, but that negotiation was carried out without public consultations or input from the local-level community assemblies. As a result, many citizens were not aware of the negotiation process with the mining company. The municipal President of San José del Progreso went along with the mining firm's propositions without bringing it to the assembly's attention. In this case, the company began from a place of disengagement with opponents, seeking out instead to get their permits with municipal agents that were in support from day one. This is a clear workaround by the company of actually engaging community assemblies, choosing instead to get the support of the municipal President. This work around by firms is a violation of the Constitutional rights of community governance, such as *ejidos* and auxiliary boards that are ostensibly awarded equal authority over land tenure rights as municipal governments. Domestic and international mining companies alike can take advantage of the legal framework of Mexico's permitting processes to eschew MSE when it serves their purposes.

The shortcomings of stakeholder engagement in Mexico are widespread, despite the international ratification of global MSE frameworks. While international norms have been implemented within Mexican law – namely, ILO 169 and UNDRIP – they are often inadequately enforced, or stakeholder engagements do not match the written law (Hayes, Forthcoming).

Recent court cases have involved affected communities in opposition to mining and their allies calling on judges to apply the precedents of UNDRIP. In other conflicts, Indigenous consultations become legal tools to defend the territory. For example, some Indigenous communities, drawing from entrenched constitutional protections, decide to declare their territories free of mining. However, the outcomes of these declarations are varied. *Amparos*, a Mexican legal challenge to unconstitutional lower court rulings, have created new legal precedence for communities to block mining activities, if the community successfully launches a legal block of mining permits in Federal court (Fundar, 2015). However, *amparos* are not the regular tool used in disputing permits for mining operations and have only worked in select cases. As both cases show, strong alliances with organizations beyond the community that offer relevant information in the form of legal and policy-based support remains a key foundation of participation for those in opposition to projects. Therefore, the fundamental reality remains that the idiosyncratic nature of local municipal politics in Mexico remains the key venue for stakeholder contestation over mining projects, because federal judicial avenues to oppose mining extraction has to run through the municipal government. In turn, clearly defined regulatory processes for achieving consent between all stakeholders at higher levels of the political and justice system remains a key challenge for communities in opposition to mining projects.

Escobar (2010) asserts that what is at stake in distributive ecological conflicts, besides economic factors and ecological conditions, are cultural meanings embedded in customary governance. The author argues that the place is the focus of the conflict because the conflict is usually represented by the territory that is a source of culture and identity. Commonlands – known as *ejidos* in most of Mexico, or *comunidades agrícolas* (agricultural communities) in some parts of Southern Mexico, such as Oaxaca – are central economic and political institutions in rural life. These have been threatened and weakened over time through various constitutional reforms and land titling reforms under the Program for the Certification of Ejido Land Rights in the early 1990s (Haenn, 2006). As the most recent *ejido* census details, there are over 31,514 *ejidos*, comprising about 54% of total surface area in the country (Government of Mexico, 2007; INEGI, 2009). Article 27 of the Mexican Constitution states that the Mexican federal government owns all subsurface rights in the nation, but that commonlands, known as *ejidos*, are also constitutionally protected for agrarian and customary purposes (Estrada Ochoa, 2006; Government of Mexico, 2016). Therefore, local land governance provides the basis for a collective voice among rural Mexican peasants and continues to play a role in permission and opposition to mining projects.

While commonlands titles were not directly nullified or violated, Article 27 was converted so that *ejidos* could be divided and sold, or rented, if there is a common agreement within the *ejidal* assembly. In this way, a former institution of commonlands protection for farmers was redeployed to suit the new state objective of expansion of mining activities. A central institution in this state objective is the Mining Law of 1992, which grants mineral extraction legal precedence over all other forms of economic activities on commonlands (Government of Mexico, 2016; Tetreault, 2016). In addition, the Mining Law of 1992 was also changed to grant mining a preferential access to water use (Government of Mexico, 2016). The Mining Law was therefore layered onto existing legislation to provide mining activities with clear advantages. During the two mining conflicts detailed in this chapter, the power of the Mining Law over the rights of *ejidos* helped set a constitutional precedent that puts stakeholder engagement secondary to the economic guarantees of investors and makes initial engagement

with local communities secondary in the legal framework governing mining project development. Legal precedence also transcended land rights to show that changes were made to environmental regulatory institutions to give further exemptions to the mining industry in specific cases where conservation lands are adjacent or overlapping with mining concessions. The Superior Chamber of the Federal Fiscal and Administrative Federal Tribunal oversees cases and has the authority to enforce the legal hierarchy of rights between land uses, which delineate between “industrial activity” (which has lower prioritization), and since mining has been considered a “primary activity” (with higher priority), concession holders often win cases that come before the tribunal that involve environmental protection, conservation, or ancestral claims (Stoltenborg & Boelens, 2016).

Recently, these policies favoring industry have been extended through the layering of supplementary legislation. Section 4 from the Ministry of the Economy’s “Investor Manual on the Mexican Mining Sector,” states the following: “institutions and the regulatory framework guarantee the property rights, protect the operation of the productive activities and ensure transparency on obligations and procedures” (Government of Mexico, 2016). There are several instances in Mexico where these rights of investors are carried out with direct logistical support from state police forces (Paley, 2014). For example, Article 19 of the Investor Manual, and Article 6 of the Mining Law of 1992, both clearly decree that a mining concession holder may choose to temporarily occupy lands if it fails to reach an agreement with landowners (Government of Mexico, 2016). The use of force is, unfortunately, common in cases where there is community opposition is present, or where anti-mining proponents do not reach an agreement with the mining company. A notable case is the community of Cerro San Pedro in San Luis Potosí, where the community and New Gold, a Canadian mining company, had a long-standing conflict over operations (Stoltenborg & Boelens, 2016). In the case studies of this chapter, however, there were not uses of these legal provisions. The point, however, remains that Mexico’s land tenure clearly favors the rights of mining concession rights over constitutionally decreed commonland rights.

A key problem leading to mining resistance and violent standoffs is that there are no formally codified requirements detailing exactly what the nature of community engagement between the company and the mine are to substantively entail. As a result, the process is uneven and up to the company to determine how much further they would like to go in engaging the community, beyond the mandatory environmental permits required by law. For an extractive project to start, a mining company needs about 30 permits or authorizations from different agencies in the three orders of government (Pérez Jiménez, 2021). The most common are environmental authorization (federal order), leasing land access to the surface (*ejidos* and proprietors) and change of land use and installation of the company (municipal order) (Pérez Jiménez, 2021). The Ministry of the Economy’s investor manual states: “in order to start operating their projects, mining companies need to process state and municipal permits and authorizations... given the freedom and sovereignty of each state, the proceedings may vary. As for municipalities, there are also a variety of licenses and authorizations to apply for” (Government of Mexico, 2020a). However, missing in this language is the formal engagement with customary governing bodies, such as community assemblies and agrarian councils.

While there are existing regulations for a variety of considerations pertinent to communities and the environment, MSE remains elusive in terms of a clear-cut process that considers local, often idiosyncratic governing contexts. The Investor Manual states: “the mining concessions grant rights to minerals contained in the subsoil, not to the surface, and it is therefore of the utmost importance to conclude agreements with the owners of the property of the

subsurface, *ejidos*, communities, etc.” (Government of Mexico, 2020b). However, the idiosyncrasies of local government throughout the country vary widely and involve a range of customary and economic-based considerations by local populations, depending on local land-based vocations, such as agriculture. While many mining projects are indeed routine and go forward with minimal issues from communities, Mexico is a country where problems arise when contestation by communities are not easily resolved by the mining company. As the chapter shows in the following case studies, municipal politics remain the primary political arena in which stakeholder engagement occurs and breaks down.

### **Case Studies in Mining Conflict and Resistance**

#### *Tlamanca, Zautla, Puebla*

Despite an absence of MSE by the mining company and in Mexican public policy, the community of Zautla successfully stopped a mining project. As the following pages will show, key external allies, strong political cohesion between the municipal government and the local governing bodies, and a rapid reaction to the project all came together so that the community could successfully defend their territory against a project they considered to be high-risk. Zautla is one of the 217 municipalities in the state of Puebla de Zaragoza and has more than 18,000 inhabitants, of which 10,500 live in Indigenous homes and more than 6000 speak some Indigenous language (Martínez Romero, 2019). The territorial extension of the municipality is around 266.7 km<sup>2</sup> and is divided into 32 communities. It is in the Sierra Norte de Puebla, in the northern watershed formed by the different partial basins of the rivers that flow into the Gulf of Mexico. The Apulco and Chilapa rivers are two of the most important sources of water available to the communities of this municipality.

According to the Centre for Rural Development Studies (CESDER), an ally of the community, about 20% of the total area of the Sierra Norte de Puebla is licensed to different extractive industry projects, such as open-pit mining, fracking and hydroelectric (n.d.). In recent years, the Sierra Norte de Puebla has been the scene of various social conflicts around natural resources such as water, wood, and various minerals (Beaucage et al., 2017). Six mining concessions were awarded during Vicente Fox’s six-year period for exploration and open-pit exploitation, as well as for the construction of a series of hydroelectric plants to supply power to these mines (Observatorio de Paisajes Sociales Mineros, 2017).

The municipality is divided into three auxiliary boards – one of which is Tlamanca, where the mining project would be carried out. The auxiliary boards are groups of communities that serve as the intermediate authority between the municipal government and the community government. They are made up of an assistant president, along with their councillors. Additionally, the community authority is composed of the Justice of Peace and the Inspector. Most communities have agriculture as their dominant economic activity. In the lower parts of the valley, in the municipal headlands and surroundings, on the roads leading to the communities and ranches, there are large expanses of land with furrows, which are generally being carved by entire families who possess the rights over them. Most of these lands wait for temporary water to see the planting grow; this means that communities do not have irrigation systems and are therefore at the mercy of the many or few rains that may arrive in the year. Not all lands are *ejidos*, many of them are small property holdings.

The landscapes surrounding Tlamanca are of vast plains of productive land. One of the most important consequences of this is that people with small ownership are not inserted into

some organizational structure to decide on land, such as *ejido* councils, but instead run their own parcels. Throughout the municipality of Zautla, the community work system of the *faena* manages public works, including the improvement of roads, buildings, or anything else that is of communal interest. When the authorities consider it necessary to call people to do collective work in the communities, the inhabitants are called from a speaker in the public square and notified to participate at a specific day and time.

In 2005, the company Minerales La Luz, S.A. de C.V. acquired the rights to the 100 hectare mining concession “La Lupe” (Observatorio de Paisajes Sociales Mineros, 2017). The company did some exploration and investment in infrastructure, but soon sold the concession. In July 2008, an exploration and exploitation contract with a purchase option was signed between Mineral La Lupe and JDC Minerals (Observatorio de Paisajes Sociales Mineros, 2017). It sought to extract mainly gold, silver, and copper by means of the subterranean extraction method. JDC Minerals arrived in Zautla to begin production in 2011, the last year of President Felipe Calderón’s administration. President Calderón signed the federal permits and then Puebla state governor Rafael Moreno Valle endorsed them (Valencia, 2017). However, since its arrival, at no point has the mining company ever introduced itself to the inhabitants or local authorities at the level of the auxiliary boards representing the sub-communities inside the municipality. In this case, it is clear from the onset of the project that MSE processes were not present, opting instead to focus on obtaining the permits required by law, without engaging directly with the community. As a result, this pitted the affected community, one with a strong communal farming vocation, against JDC minerals.

In the municipality of Zautla, a consultation was carried out by the government in the 32 communities that make up the wider municipality, to decide on the viability of the mining project. The consultation was promoted by community authorities through the community assemblies in each community. It was decided by a public vote, via show of hands, that the municipal president deny the company the permit it requires to operate, to change land use, and to deny the Ministry of National Defense permission to the company transport and use explosives in the municipality (La Jornada, 2012). This consultation was carried out after CESDER informed the population about the possible damage that the mining project could cause. The result was a unanimous rejection by the 32 communities that was reflected in an assembly document signed by the auxiliary boards, the municipal president and the *ejidal* commissioner. On November 21, 2012, municipal authorities along with some 5,000 residents went to the company’s facilities to remove equipment belonging to JDC Minerals.

While MSE was not carried out by the mining firm, the linkages between the municipality and these sub-municipal governing bodies meant that the municipality carried out stakeholder engagement on their own terms, through direct engagement with the authorities of all 32 communities. To reiterate, this is not conducted based on formal federal legislation or policy, but rather based on cohesion between municipal and community level governance bodies. The municipal political context of Zautla was cohesive from top to bottom, including the sub-municipal governing bodies, including the three auxiliary boards and associated community assemblies that link the 32 sub-municipal communities to the municipal government. In comparison to the next case study, the study finds that this political cohesion was integral to the success of the community to ultimately see the mine closed. There are several explanations for the success of Zautla, which are now explained in turn.

First, Zautla had experience in organizational capacity against industrial projects. Interviewees stressed the importance of the learning experience from resisting sustainable rural cities, a federally-led development initiative to build urban settlements and move

dispersed households to a central location (Martínez Romero, 2019). The initiative was applied in Zautla with the goal of clearing households from the concession areas where JDC was posed to begin extraction. However, there was strong resistance to this project which was supposed to benefit the indigenous and rural communities of Zautla. Resistance to the project came from the supposedly beneficiary communities, municipal officials of Zautla, and Indigenous and peasant organizations (Rojas, 2013). It is important to note that both the rural cities project and the mining project, although they were federal initiatives, were endorsed by the governor of the state of Puebla. Meaning, there was an existing organizational solidarity built into the community to oppose projects imposed from the top down and from outside of the community by State and Federal authorities.

Second, the community organized with allied organizations, such as CESDER. The overall strategy was maintaining control of municipal governments and intermediary governance structures that tie municipal politics to community interests and sentiment (Beaucage et al., 2017; Martínez Romero, 2019). Field interviews showed that the municipality has historically built their social, economic, and political structures closely aligned with objectives of customary agriculture and community-work systems for centuries (Martínez Romero, 2019). During the process of negotiations, it became known that there were municipal authorities that were in favor of the mine. The Substitute Judge and the Substitute Assistant Judge were supportive of the mining project, in spite of the widespread community opposition, and were therefore dismissed (Martínez Romero, 2019). The judges were dismissed on the grounds of conflict of interest, given their known personal ties to the mine, including their employment, or familial employment, by JDC Minerals (Martínez Romero, 2019). Several community interviews indicated that most municipal authorities represented the popular will of the 32 communities popular governance assemblies and therefore relayed the opposition to the mining project, by working to block the delivery of the municipal licenses (Martínez Romero, 2019). In particular, the municipal president of Zautla was a key leader in the opposition to the mine, given the position's connection between community interests to the state and federal authorities (Martínez Romero, 2019). Despite the lack of required MSE between the company and the community, the municipal president represented the auxiliary boards that are the intermediate authority between the municipal government and the community governments, known as Assistant Boards. These are comprised of councillors that govern the sub-communities within the wider municipality, who aligned in the opposition to the project. In this way, some MSE was built into long-standing unity in the community and cohesion between the municipal government and the affected stakeholders.

Third, the cultural significance of the water springs, hills surrounding the community, and farming was a driving reason for opposition. In Zautla, there is a symbiotic relationship between community, work, and the land. Much of the political organization, belief systems, and distribution or allocation of resources has a community-to-land relationship at its center. A significant part of the population is indigenous and has a unique worldview about the environment and common pool resources. One interview with a community leader referenced the ancestral and economic importance of the Atitán spring and the Aquiohuich hill to the community: “here people are engaged in the countryside [and] agriculture. There is very little cattle breeding... about 96% are farmers” (Martínez Romero, 2019).

Fourth, one of the key factors in the outcome of the conflict was the availability of information, due to the linkage between the community and CESDER. The interviewees pointed out that there were two different circumstances in the community: before and after the arrival of the allies from CESDER. Interviews explained that the company always referred to the

benefits that the community would gain, but CESDER, drawing from knowledge of other mining operations, warned them of the risks and potential damage to their agricultural traditions. The dissemination of information was the greatest work done by CESDER in their support of the community and of the local government, which led to the almost-unanimous rejection of the mining project. The dissemination of relevant information is an important point for the success of Zautla because it was the cohesion between the formal and customary governance, mixed with strong detailed information from CESDER, that maintained a base of solidarity. In an ideal-type MSE between firms and affected communities, the firm would provide relevant information of how the project may interfere with the land uses and the rights of the affected communities (Maher & Buhmann, 2019). This is particularly pertinent in agricultural communities. While CESDER provided key information for communities to understand the risks and impacts of the mine project, the company did not provide relevant information, a crucial pre-condition of MSE, as described in the introduction of this volume (Buhmann et al., 2024).

### *San José del Progreso*

Pre-existing local political divisions are crucial to understanding the development of the conflict in San José del Progreso (Martínez Romero, 2019). San José del Progreso is a community that built its territorial arrangements through agriculture as the guiding axis of economics and social life for centuries (Panico & Garibay, 2014). However, although agriculture is the most popular economic activity in the municipality, it has fallen into disuse mainly due to poor weather conditions and the large migratory flow that exists. A good part of the population migrates to the United States or other cities to practice trades such as masonry. This has had the consequence that the assemblies, both *ejidal* and citizen, lose the power to convene and coordinate.

An important factor in making stakeholder engagement ‘meaningful’ is understanding that the nuances and needs of affected stakeholders entail a range of opinions on a prospective mining project (Buhmann et al., 2024). The study finds that the top-down implementation of stakeholder engagement by the firm to the community level in San José del Progreso had clear issues with addressing nuances and needs between different factions at the sub-municipal level. This contrasts with Zautla, where these governance levels all agreed on their stance against the mine. In San José del Progreso, there is a very clear division between the municipal head office and the community agencies, but also within the same municipal head there are several groups with substantial differences.

The main space for political deliberation and communal organization is the citizen assembly that takes place every month in the municipal headlands, but these were not used in the case of the mine’s engagement with the municipality to secure their permits. According to one informant, “The Citizens’ Assemblies are held every month. The President details what works were pending, what works were happening... that is how it was before *usos y costumbres* [literally, “uses and customs,” a broad term for various community work and governance systems] but now it’s not” (Interview with female community leader, age unknown). San José del Progreso is one of 570 municipalities in the state of Oaxaca, located in the region of the Central Valleys of Ocotlán, approximately an hour and a half from the city of Oaxaca. According to the 2010 census, 995 people live in indigenous homes and are considered one of the five poorest municipalities in the state, Zapotec being the most widely spoken indigenous language (Martínez Romero, 2019).

One of the main problems is that local *caciques* (local political strongmen) exist in the municipalities. According to one interview with a community leader, “here in this area there are still many *caciques* (local influential strongmen). They are leaders of families or groups that have had political power and are usually associated with mining project mobilizations. There are many political interests at play, and they use environmental discourse, but the real undertone is to reclaim local political clout.” Within the political history and historical idiosyncrasies of the region, these political and local power dynamics are a cornerstone in the different municipalities of Oaxaca and in San José del Progreso, played out in the development of the mining project. For example, interviewees opposed to the mine have indicated a lack of information on the mining issue, a lack of consultation with Indigenous farmers, the imposition of the project, violence, criminalization, murder, and discretionary handling of the law (Martínez Romero, 2019). In contrast to Zautla, there were no strong external alliances with organizations that had access to information that would help clarify the risks and impacts of the project on affected communities. The company initially went to the municipal authorities in 2006 to request the corresponding authorizations, including water access. However, this happened without giving notice to the villagers, which have been referred to as secret agreements between members of the town hall and other persons who were listed, vaguely, as “community authority” from the community of San José del Progreso (Martínez Romero, 2019). Hernández (2014) states that there is no definitive origin point to the conflict, but that the arrival of mine personnel in 2006 created widespread confusion and community polarization in the community over the permitting of the 360 square mining concession, which overlapped with customary agricultural land. In San José del Progreso, unlike Zautla, there is a deep rift running through the community between proponents and opponents of the mine, which is informed by various cleavages, including ethnicity and vocation. Three interviewees pointed to the fact that the local municipality leadership had approved the mine via meetings that were closed to the public. The decision to do this was based on their ties to *mestizo* communities in the wider municipality and were not interested in the input from community assemblies associated with the local Indigenous agrarian communities who were likely to have concerns about the mining project (Martínez Romero, 2019). Given that the permitting process in Mexico allows for MSE to be carried out in a top-down, internal process between the mine and the municipal government, the nuances of sub-municipal dynamics and different affected stakeholder needs in San José del Progreso were marginalized by the top-down process that locked out affected stakeholders.

There are several factors resulting in the advancement of the mine in San José del Progreso, despite fierce community opposition. First, the community mine polarization played out within existing community divisions. According to one interview, on one side are migrants of mixed ethnicity (known as *mestizo*); on the other are Indigenous Zapotec, which have a stronger relationship with land and territory. For the latter, there is a close relationship with the land and its resources. But, interviewees pointed out that the Zapotec are strongly discriminated against by the non-indigenous migrants to the area: “*mestizos* place a strong discrimination on people who speak Zapotec; many Zapotecs have stopped speaking in their original language” (Interview with male *ejido* member from Ocotlán, 68 years old). A part of this process of racial division also includes the division between holders of *ejido* land titles – many of whom were willing to lease their titles to Fortuna Silver, which undermined the wider cohesion of *ejido* governance. Similarly, the two spaces of community coexistence – the citizens’ assembly and the *ejido* assembly – were dissolved over mining support and opposition. In the process, the organizational dynamics to carry out the people’s annual festivities and



celebrations were also lost. These were replaced by gifts, handouts and events organized by the company in conjunction with the legal authorities of the community.

Second, the endurance of anti-democratic elements associated with *caciques* captured the municipal government and asserted their wishes over other municipal leadership posts. An interviewee reported that, “there have always been conflicts between the agencies and the municipal capitals because there is marginalization and exclusion. There are practices of the exercise of authoritarian power, where the municipal authorities do not present issues to the Assembly [for community deliberation].” A similar claim was made that in agrarian assemblies, where power struggles ensued with actors from the municipal authority. The lack of cohesion between the governing entities undermined the efforts of mine opponents to garner dialogue and negotiation with the municipal authority, who supported the mine.

Third, the secrecy in the San José del Progreso City Council during the approval process of mining activities was the main grievance by which the inhabitants of this municipality began to organize. One of the first actions was to inform the whole community that the municipal president had made agreements without informing or consulting the population. Interview subjects cited photographic evidence of the mayor meeting with mine representatives prior to the swift approval of the permits the mine needed the municipality to sign off on (Martínez Romero, 2019). The layered governance of the municipal office with an *ejido* that had carried out the land-titling program of the early 1990s (*de facto* privatization) of the 1990s, helped circumvent the will of the local citizen’s assembly and caused community rifts among title-holders about allowing mining access. In the end, the supporters of the mine prevailed and Fortuna Silver was able to take advantage of the political idiosyncrasies of deep political divisions. Stakeholder engagement, therefore was not carried out and the mayor acted as a rubber stamp for the wishes of the mine to secure their permits.

### **Analysis and Concluding Remarks**

Legal precedence, combined with insufficiently defined regulations and formal processes of prior and informed consent between firms and municipalities, are historically constituted from reforms dating back to 1992. Those reforms have led to failures in government-led stakeholder engagement, despite rising narratives of MSE within industry. Without MSE parameters from government, conflicts will surely continue as Mexican authorities pursue extractivism-based development. Both cases display that municipal politics and community governance at the sub-municipal level are the *de facto* venues of community mining resistance, which creates large challenges and small likelihoods of success in opposing projects. In both cases, the mining companies did not engage with these local groups, meaning that the cohesion between the federally linked municipal government body and these local customary governing bodies was the only remaining avenue for stakeholder engagement. As a result, patterns of conflict continue to be shaped by the unique political circumstances of municipalities. The implication of this for MSE is that personal sentiments of municipal leadership hold in the balance the outcome of granting mining permits. While the stakeholder engagement process is formally determined by a top-down process by the federal government, the requirements of the company are limited in that they only need to get operational permits from the municipal government. Both cases show that a nuanced understanding of the internal dynamics within rural municipalities, which are comprised of many local-level sub-municipal communities, is not a codified element of stakeholder engagement in Mexico’s policies of community engagement. Therefore, sharing relevant information for affected

communities and meeting with community-level governing bodies outside of the formal municipal authority is missing. As Buhmann et al. (2024) describe in the introductory chapter to this volume, the sharing of relevant information is an essential component of MSE. Since the municipal government ultimately gets the final say on the approval of mining projects, the stakeholder engagement in Mexico prior to the development of mining projects is not meaningful.

The lack of consensus between the appendages of municipal democracy in San José del Progreso is the main cause of why the mine continued to operate, despite clear opposition from the Indigenous farming population of the municipality. The mayor, as a proponent of the mine, did not engage in MSE with the wider community to negotiate fair terms for allowing mining. The company, like in Zautla, did not provide relevant information for affected stakeholders. Instead, in San José del Progreso, the company liaised with the municipality, who supported the mine, despite the opposition by community assemblies in the sub-municipal communities. In contrast, Zautla was able to maintain important linkages between the community assembly and the formal municipal links to the state-level and federal political public administration. The differences in land tenure also shows how a cohesive citizenship base and clearly delineated local governance authority that addresses the priorities of land use in the community is key in the outcome of a mining resistance. Another variation between the cases is that the added layer of governance of the *ejido* council is not present in Zautla but was a key centre of contestation in San José del Progreso.

At the national level, where mining policy and community engagement policy is set, there is new pressure on the federal government to enhance the relative power of communities through legislative and regulatory change. In the years following the outcomes of these two cases, there have been piecemeal changes to mining policy – particularly, the Mining Law of 1992 in 2022 and 2023 – that softens the language of the public utility right of mining. Now, there is language in the law that states that Indigenous communities and Afro-Mexican populations are to be consulted at the onset of exploration and subsequent mineral project production (Cámara de Diputados, 2023.). What is less clear, however, is that these changes have come under the context of an executive decree in 2018 by President Andrés Manuel López Obrador that new mining concessions were to be halted. In the years since, there has been a deceleration of concessions; however, some concessions continue to be granted (Navarro, 2023). As a result, there are some indications of policy change; however, it remains to be seen how the alternations will impact the prospects for MSE at the community level in rural municipalities. As it stands, mining conflicts continue to unfold, and international MSE frameworks ratified by Mexico continue to exist in writing, but do not often get applied in practice.

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# CREATING MEANINGFUL ENGAGEMENT WITH MEGA-CONSTRUCTION PROJECT WORKERS AND SPECTATORS IN COMPLEX ENVIRONMENTS

*Thomas Trier Hansen, in conversation with and Karin Buhmann*

## **Introduction**

Mega-events, like major global or regional sports events, often require the construction of new facilities, such as stadiums. As ambitions around these events grow among states that offer to host them, the need for construction follows suit. The hosting of mega-events in sports are generally undertaken between a host state (or sometimes, several host states) in collaboration with a multinational organization of a private or hybrid-like form, such as the International Olympics Committee (IOC) or the Fédération International de Football Association (FIFA). The sheer size of the sporting facilities as well as associated infrastructure, such as accommodation for participants and spectators and roads for transport, are well-known for being associated with different types of activities that can be harmful to stakeholders who are not directly involved in the sporting events, but are affected by the construction of facilities. For example, the construction of facilities for the Olympics in Beijing, China (2008) and Rio de Janeiro, Brazil (2016) caused the resettlements of people living in areas that were converted from (sometimes informal) residential areas to sport facilities (e.g., Vartak 2008; Tapley 2012). The construction of stadiums and infrastructure also requires large numbers of workers, many of whom are migrant workers from within the host state or, in some cases, from other countries. The latter is particularly the case in countries that do not have a large workforce for manual work. Several countries in the Middle East region, for example, rely mainly in foreign migrant workers for construction and other forms of unskilled labour. The construction of facilities for the 2022 FIFA World Cup in Qatar was accompanied by large-scale migration of mainly unskilled workers, especially from South Asia (e.g., New York Times 2022). The construction of facilities for the 2034 FIFA World Cup is expected to also lead to an influx of migrant workers from several countries.

The potential challenges for resettlements or conditions for workers in accordance with what is considered international best practice, including the OECD Guidelines, can be exacerbated by national governance structures that do not allow for trade union freedoms or consultation between decision-makers and affected stakeholders. This may be further exacerbated by other national governance structures, such as the general form of government and accountability within the national constitutional setting.

Accordingly, involved multinational sports organizations and/or foreign multinational companies with construction expertise may be confronted with difficult challenges as, on the one hand, they operate in a host country, where as professional 'guests' they must observe and operate within the national legal framework, and, on the other, they want to deliver on international expectations of responsible business conduct (RBC) and their own commitments, such as in regard to occupational health and safety, leisure and working hours, remuneration, and adequate accommodation provided as part of the remuneration. These challenges may sometimes call for innovative strategies for ensuring stakeholder engagement with affected stakeholders in ways that are meaningful to them, generate information that the multinational organizations can act on to identify and manage harmful impacts as part of their risk-based due diligence, and function within the applicable legal frameworks.

From the perspective of RBC as set out in the OECD Guidelines and the UN Guiding Principles on Business and Human Rights (UNGPs, UN 2011), meaningful stakeholder engagement is an important element in the risk-based due diligence process that organizations involved in transnational business operations are expected to undertake. This also applies to sports organizations whose operations and other activities involve, or are otherwise directly related to, business operations. MSE is a term, and ideal, in which each element counts towards the whole, and for which the value foundations of human rights, including participation rights, are key. In engaging with stakeholders, organizations should observe the same principles as those defined in relevant human rights concerning participation in decision-making that affects one's life. This means, *inter alia*, that the organizations should give affected stakeholders access to information relevant and adequate for them to understand and respond to a situation, project or plans; provide adequate channels for response and feedback, also on the actions taken by the organizations in response to the concerns and grievances expressed; and generally ensure a situation of equality in which those who are often the most vulnerable (such as migrant workers or people dispossessed of their lands, even if resettled) can critically engage the more powerful actors (typically companies, authorities and other large organizations), and demand to be meaningfully involved in situations of planning, execution and follow-up on activities that may or do place their human rights, including labour rights, at risk or harm. MSE is not just consultation, but a qualified form of dialogue that passes information both ways: between those at risk or actually affected, and those who are involved in the activities causing the risks or harm. And, most importantly, the latter must be willing and interested in listening, understanding risks and their causes, and act to prevent, mitigate, remedy and account for the risk or harm.

In the following, taking the example of migrant workers for construction projects as well as other stakeholders who are involved in mega-events as spectators, this professional practice note looks at how processes can be established for rights-holders as well as general stakeholders to ensure that they can voice their concerns without subjecting them to subsequent risk of prosecution or harassment, or, more generally, learn about human rights and engagement in ways that may spread to other events.

### **Creating avenues for MSE for foreign migrant workers**

Without independent trade unions, or even trade unions at all, there are no obvious ways for workers to organize, become aware of their rights at work and make claims on employers to respect and deliver on those rights, nor for multinational sport organizations or business enterprises to engage with workers. Even where local civil society organizations exist, in the Middle East they are frequently not focused on labour issues but rather on local family issues. This renders it difficult for multinational organizations to obtain valid information from local sources or to collaborate with those for outreach to workers. Then, how can multinational sports organizations and business enterprises develop interaction with workers to and assist them in knowing about their rights and speaking out if they are not respected?

In the following, the processes established by the organizers, including FIFA, for construction workers for the World Cup are an example. In the face of abundant criticism from many corners and challenges within the governance set-up, innovative approaches to engagement with workers emerged that may hold potential as sources of inspiration for projects elsewhere. It is important to note that FIFA was just one organization involved, and that FIFA did not have control of independent construction projects or initiatives by other actors, such as international hotel chains.

The context was the following: In preparation for the 2022 FIFA World Cup in Qatar, construction work and refurbishment of stadiums to host the World Cup's matches took place during much of the decade leading up to the event. FIFA is a non-profit organization and the international federation governing football (soccer). Qatar, a Gulf-nation that is home to around 2.8 million people, established the Qatar Supreme Committee for Delivery and Legacy (SCDL), which contracted construction firms and other relevant business enterprises to construct the stadiums. Much of the manual work was undertaken by migrant workers from South Asia. After work on the stadiums had begun, reports emerged of problems related to working hours, occupational health and safety, cramped accommodation, underpayment, fee schemes and retention of employees' identification documents. FIFA came under severe critique for being connected to labour and human rights abuse. Initially, FIFA claimed that as it was not a government, it did not have human rights obligations, and moreover that as it is not a business enterprise, the corporate responsibility to respect human rights according to the UNGPs and OECD Guidelines did not apply to the organization. Later, however, FIFA changed stances and in 2017 published a global human rights policy aligned with the UNGPs. The policy notes, inter alia, that where the national context risks undermining FIFA's ability to ensure respect for internationally recognised human rights, FIFA will constructively engage with the relevant authorities and other stakeholders and make every effort to uphold its international human rights responsibilities (FIFA 2017).

In collaboration with international advisors, the SCDL established a series of initiatives aimed at respecting labour rights for the workers; providing workers with knowledge of their rights and ensuring good and safe labour practices through a code of conduct called the Workers' Welfare Standards (WWS) (SCDL, 2022) and developing avenues for dialogue with workers through so-called '*workers' welfare forums*'. The WWS initially covered construction workers and in 2021 was extended to include hospitality, tournament services (including security and logistics), and other professional services associated with the FIFA World Cup Qatar 2022.

The *WWS* was an important step in facilitating labour rights. The WWS outlined the requirements to the contractors from the recruitment stage (including ethical aspects of recruitment), during employment and through to the end of employment. It embodied the

rights whose enjoyment workers have a claim to vis-à-vis their employers. This also provided workers with information on those rights so that they were able to know about them, and understand if they were not respected.

Supporting the practical implementation of the WSS, workers' welfare forums were set up for each accommodation site as an innovative way to establish dialogue. The objective of the forums was for workers, via the workers' representative, to raise matters of concern to them on any issue without fear of retaliation. The workers' representatives were elected by the workers from each nationality in order, according to the SCDL, to encourage a culture of open dialogue. Targeting multiple different nationalities, the workers' welfare forums de facto served for many of the purposes that trade unions serve in order to inform workers of their labour rights and channel concerns and grievances to employers for rectification. Workers were introduced to their rights and systems were set up to inform and train them in workers' rights.

While the workers' welfare forums clearly do not fully serve all the functions of free trade unions, they were a way to establish de facto some of the important dialogue elements related to labour rights protection that trade unions can provide. The implementation of the WWS was regularly reviewed by the organization Impactt and a final report published in March 2023 (Impactt, 2023).

### **Creating awareness of human rights and engagement among mega-sport event stakeholders**

In collaboration with an international civil society organization and the United Nations (UN), FIFA also established a project to engage with spectators and other interested individuals who were in Qatar around the time of the World Cup.

*Human rights volunteers* were teams of laypeople, who were trained in human rights. Operative during the actual World Cup tournament, their services extended to various activities, for example to monitor and assist with human rights issues (such as harassment) on stadiums and in FIFA fan zones during the tournaments. The volunteers received training through a human rights crash course offered by FIFA in collaboration with a civil society organization (the Centre for Sports & Human Rights ([sporthumanrights.org](http://sporthumanrights.org))) and the local Qatar-based educational office of the UN Office of the High Commissioner for Human Rights. The total body of trained human rights volunteers comprised more than 100 individuals. The average team for each stadium comprised 8–12 people, about 70% males and 30% females, displaying a wide range of educational backgrounds, including students, engineers, migrant workers in multiple skilled and unskilled professions, etc. Many of the volunteers hailed from the Middle East region.

In their teams, the volunteers would walk around the premises and get into dialogue with fans to learn of their experience from a human rights perspective, take note of incidents (positive as well as negative), and report them to FIFA and the tournament organization. The information was passed up through the internal system with a view to following the situation at each of the World Cup stadiums. In practice, this served as a channel for bottom-up insights, based on experiences of individuals whose rights were affected, and who shared them with the volunteers whose education equipped them with the capacity to interpret and identify an incident in human rights terms. Also an innovative construct, the establishment of groups of human rights volunteers doubled as a way to train multiple individuals in human rights and building competences for bottom-up engagement by setting up an engagement mechanism



drawing on observations and insights from below, followed by a process of analysis, monitoring, and response from the organizers. As many of the volunteers were people from the region, the training provided people from neighbouring countries, governance structures, and sharing the Muslim faith of Qatar with information and insights on human and labour rights, as well as alertness on potential abuse and awareness of the importance of reporting and response. Keeping in mind the novelty and innovative character, this offers potential for upscaling that may be deployed by other types of organizations in other contexts, whether in the Middle East region or elsewhere. Arguably, part of the potential is due to the fact that observed incidences and responses were reported within FIFA and can therefore contribute to onwards learning on risks in order to identify and prevent incidents, also for future events. Considered from the 'do-no-harm' perspective of the UNGPs, learning from actual risks and incidents is an important element in understanding potential causes and preventing risks and actual abuse in the future.

Besides the mega-event-related impacts for involved organizations, training offered to the volunteers may also contribute towards building competences for training other individuals in human rights, observing and analyzing practices, and make use of reporting channels.

FIFA and the Centre for Sport & Human Rights published information on the FIFA World Cup Qatar 2022 human rights volunteer program on the Centre's website ([sporthumanrights.org](http://sporthumanrights.org)). Following the volunteers project in Qatar, the Centre is now actively promoting the concept for other mega-sporting events.

While the initiatives undertaken up to and during the 2022 World Cup are one-off initiatives to date, they can be understood as examples of how criticism may result in positive innovation with wider implications. The initial process is by necessity contextual, set within and responding to the context of the governance and wider societal system in which an event occurs and in which the preparatory activities, such as construction, take place. The contextuality can be a strength as it serves to show other states and organizations operating within similar or related contexts that such initiatives can be undertaken; and that they add to the event.

### **Conclusion and outlook**

In a context with no trade unions, the workers' welfare forums amounted to a de facto function serving some of the same key functions for trade unions to represent workers and establish a forum for dialogue that was, hopefully, meaningful for workers by addressing their rights and their situation from within the context that was given. Migrant workers who were involved in the construction projects in Qatar may move on to projects elsewhere and bring along the knowledge of their rights and of grievance mechanisms that they obtained through the training program. The model is potentially replicable in context, such as societies with a limited tradition for debating and challenging impacts and decisions made by more powerful organizations, whether public or private. Coupled with the initiative's anchoring within the SCDL, the application demonstrated robustness which allows for replication elsewhere in the region.

The human rights volunteers, similarly, were a mechanism for establishing dialogue and learning, beyond workers and also potentially extending much further through potential multiplier effects of knowledge and awareness that the volunteers may put into other situations and contexts in their home countries. While not perfect, nor a fully-fledged solution to major institutional and contextual human rights challenges, they may, on the other hand, serve as seeds for gradually addressing and improving problems in the region and beyond.

Even so, attention must be paid to ensuring longer-term effects. Reports indicate that after international attention with the situation of migrant workers in Qatar have abated after the World Cup was over, some practices have fallen back. That is particularly the case with organizations not directly involved with FIFA, who remain in place with other business involvements. The fate of the workers' welfare programs after the World Cup is uncertain, which raises needs for other ways to create for workers to have access to dialogue with employers.

The program developed may potentially be expanded to other situations typically associated with mega-sport events, such as resettlements. With adjustments to context and the situation of affected stakeholders, a rights awareness program with grievance procedures might also be deployed for land planning and impacts on people living on or off that land.

Several issues remain to be developed in more detail, such as monitoring and channels for assessment of effectiveness of responses. As initiatives like workers' welfare forums may be deployed in other contexts and for other projects, this could be a priority point.

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# STAKEHOLDER ENGAGEMENT IN FOREIGN-INVESTED TEXTILE OPERATIONS IN ETHIOPIA

## Enhancement of ESG Standards and Performances of Chinese-Invested Textile and Garment Enterprises

*Liang Xiaohui*

### **Introduction and context**

Industrialized textile production in Ethiopia goes back, at least, to 1939 when the first garment factory was established (Frodl-Dietschmann, 2023, at 242). The Ethiopian textile and garment industry is witnessing rapid growth, as more and more domestic and multinational companies are engaging in the production of textiles and apparel for domestic and global markets. In the path to industrialize Ethiopia, the sector is being given a prominent position by the Ethiopian government in boosting exports, creating job opportunities, and, as a model to other sectors, making it a top priority as part of the Ethiopian goal to become a middle-income country by 2025. The government's objective is to make the sector globally competitive and to bring the necessary structural transformation to the nation's economy through export, creating jobs in the industry, attracting foreign investments and, above all, contributing to poverty reduction. The Ethiopian government's industrial development strategies, including industry park development, incentive mechanisms, and enabling policies to attract foreign investment, play a major role in the growth of the textile sector in Ethiopia.<sup>1</sup> The effects of these strategies and policies affect a range of local stakeholders involved in the industry, including local factory owners and managers, as well as workers and the communities in which textile production takes place and/or from where workers hail.

China has become the world's largest investor in textiles and garments. Such investment typically also embodies involvement in the production. Supported by various national policies encouraging overseas investment and the upgrading of the textile sector, Chinese enterprises have been prompted to move manufacturing operations to other countries. Ethiopia, among other countries, is becoming an attractive destination in this regard. According to various sources, China has been Ethiopia's largest trading partner and biggest source of

investment for many consecutive years, accounting for 60 per cent of newly approved foreign direct investment (FDI) projects in 2019 (Xinhua, 2020). When it comes to the textile and garment industry, according to the China National Textile and Apparel Council (CNTAC), among all foreign-invested textile and apparel factories in Ethiopia, nearly half of the investments came from China (UNIDO et al., 2021, foreword).

Meanwhile, environmental, social, and governance (ESG) principles and standards in regard to responsible investment and supply chain practices have emerged as a more proactive movement that ensures a holistic approach to sustainability in the way that industries and investors are committed to managing the ESG-related risks and opportunities. Thus, for the Ethiopian textile and garment sector, ESG standards are no longer a mere option but are becoming mandatory if the wish is to meet the demands and expectations of workers and local communities, create more jobs, and promote sustainable economic growth. The sector is experiencing growing pressure from garment brands and retailers in Europe, CSOs, and local communities and workers to integrate environmentally and socially sustainable practices into its operations and to improve its ESG performance. This has also been observed by Chinese actors in the sector. The ‘S’ factor embodies labour issues and impacts on other weaker stakeholders, as well as frequently expectations that involved investors and lead firms engage meaningfully to understand and address their concerns.

This practice note addresses issues related to meaningful stakeholder engagement based on the “Sustainable Textile Investment and Operations in Ethiopia” project. The project involved a baseline study, including: a survey with stakeholders; awareness creation and capacity-building programmes; establishing a knowledge management platform; and promoting South–South and triangular cooperation for global partnership. The survey was on the ESG performance of Chinese-invested Ethiopian enterprises in the textile industry. Given the multi-stakeholder collaboration framing the development of the industry, the survey also relates to efforts to involve diverse stakeholders, including workers, unions and civil society organizations in an exploration of practices, training needs, and possibilities. By addressing the larger multi-stakeholder collaboration, the note draws attention to some of the insights that emerge in relation to industry development in a context where jobs and exports have high national political and economic priority. As noted in the survey, although Chinese-invested textile and garment enterprises in Ethiopia “have made positive contributions to the local sustainable development... there exists space for further improvement in understanding local ESG-related laws and regulations, and stakeholder engagement in ESG issues” (UNIDO et al., 2021, foreword). According to an executive of a Chinese-invested enterprise, the management of “people”, especially workers, was “the most difficult one among the challenges in operation” (UNIDO et al., 2021, at 13).

### **A multi-stakeholder project within a triangular cooperation**

Faced with the ESG demands from external actors and demands from workers, civil society organizations and local communities, the Ethiopian government decided to enhance the ESG standards and sustainability performance of its textile and garment sector. It was decided to do this by applying multi-stakeholders’ interventions within a triangular cooperation framework involving three governments: Ethiopia as the host country; China, the main source of foreign investment in Ethiopia’s garment sector; and Germany, one of the most important export markets of garment products out of Ethiopia. In this context, the Sustainable Development Goals (SDG), in particular SDG 17, served as a source of inspiration. SDG 17

makes explicit reference to the role of South–South cooperation in mobilizing additional financial resources for developing countries for the achievement of all the Sustainable Development Goals (UNIDO, 2021a). Moreover, Agenda 2030, which embodies the 17 SDGs, also implicitly makes reference to working conditions and risk-based due diligence and, therefore, meaningful stakeholder engagement, through the mention in the implementation provisions of labour rights, ILO core labour standards, and the UNGPs (UN, 2025, para. 67). Other major international frameworks, including the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Climate Change Agreement, have given a new impetus to South–South and triangular cooperation involving Global North-based countries. In July 2016, the United Nations General Assembly proclaimed the period 2016–2025 as the Third Industrial Development Decade for Africa, underlining the need for the sustainable industrialization of Africa. South–South and triangular cooperation was explicitly called upon for the implementation of the Decade in support of African industrialization (UNIDO, 2021b, at 29).

The project, which was given the name “Sustainable Textile Investment and Operations in Ethiopia”, was agreed on and designed and sponsored by the three partners of the triangular cooperation in 2019, with the aim of improving the application of ESG standards of the Ethiopian textile sector through capacity development and awareness raising for investors from China and other countries and their local business partners, with potential scaling-up and replication elsewhere in Africa and Asia. The support provided to the ESG performance of the target companies and local small and medium-sized enterprises (SMEs) was expected to enhance their capacity with a focus on working conditions, labor rights and community engagement, while creating a wider impact on local and national economic growth and job creation.

In order to fulfil these objectives, a multi-stakeholders project implementation partnership was established, comprising UNIDO, CNTAC, the Ethiopian Textile and Garment Industry Research and Development Center (TgiRDc) and GIZ (the German International Development Agency). The United Nations Industrial Development Organization (UNIDO) has been actively involved in Ethiopia since 1968, with nearly 300 projects covering a wide range of technical assistance interventions, including cluster building and value chain development. By 2019, when the project in Ethiopia was initiated, CNTAC had almost 15 years of experience in working with its members, inter alia Chinese textile and garment companies, to promote CSR and ESG in their operation in and outside China. CNTAC has been pioneering CSR guidelines in Chinese industries and has created and implemented an industry-level code of conduct CSC9000T, a Chinese version of such international standards as SA8000 and BSCI, with an application focus and a significant emphasis on core labour standards (see CNTAC (n.d.); Buhmann, 2018). The TgiRDc is one of Ethiopia’s most knowledgeable and influential research and professional service institutions in the textile and garment sector. GIZ, on the other hand, had implemented several textile and garment industry projects in China, Southeast Asia and Europe, and hence could serve as the perfect facilitator of an international project connecting China with Africa, and investment with manufacturing and export markets. To ensure effective coordination and delivery of the targeted results, the project coordination team developed a joint operation action plan for monitoring and evaluation, including how key stakeholders were engaged. Furthermore, the multi-stakeholder structure constructed by influential players in three countries and at the UN level, made stakeholder collaboration possible in a transnational implementation environment, severely hampered by the COVID pandemic.

### **Meaningful Stakeholder Engagement in Multi-stakeholder Interventions**

The “Sustainable Textile Investment and Operations in Ethiopia” ESG project comprised four main components, including: a baseline study; awareness creation and capacity-building programmes; establishing knowledge management platform; and promoting South–South and triangular cooperation for global partnership. The detailed formulation and implementation of the project was based on consultative stakeholders’ meetings at different levels (public, private, and international development partners). The key local stakeholders were the Ethiopian government agencies, TgiRDc, Chinese and local textile and garment companies, managers and workers, and other local organizations. At the higher level, the project political partners oversaw and monitored the project performance and progress by consultation meetings among themselves and with implementing partners. And at the lower level, implementing partners engaged with stakeholders such as textile and garment manufacturers in Ethiopia, workers, trade unions and local communities to make sure their views and expectations were meaningfully collected and integrated into project implementation.

#### ***Baseline study***

The baseline study was conducted to collect, understand, and streamline the requirements, demands, and expectations from various stakeholders on the ESG performances of the textile and garment companies in Ethiopia. It was implemented by a multi-stakeholder team led and coordinated by CNTAC, applying methodologies to provide for engagement that was intended to be meaningful to those who took part and those who would benefit in terms of training, employment etc. Data collection was undertaken through the active engagement of Chinese and local industries’ management and operational staff and industry workers. Questionnaires for management and employees were separately designed, and the questionnaire for management consisted of 49 questions covering enterprises’ profiles, human rights and labor rights, environmental protection, industry and supply chain management, as well as expectations towards ESG capacity building from enterprises.

The questionnaire for employees consisted of 27 questions that aimed to collect baseline data regarding labor relations, protection for young persons, working hours, remuneration, health and safety, gender equality and women’s rights, and skills training, as well as workers’ perceptions and needs in all these regards. In addition, employees’ recognition and evaluation towards the above management measures were also integrated in the questionnaire (UNIDO et al., 2021). Management questionnaires from 15 Chinese-invested enterprises and 155 employee questionnaires from 10 Chinese-invested enterprises were collected by CNTAC. TgiRDc collected 76 employee questionnaires from 10 local Ethiopian enterprises, 40 questionnaires from 5 non-Chinese FDI, and 13 management questionnaires from 8 local enterprises and 5 non-Chinese FDI. Face-to-face interviews were conducted at the headquarters of 10-plus textile enterprises investing in Ethiopia in a couple of cities in China. It is worth mentioning that, despite the limitations posed by the COVID crisis, the project team managed to interview Ethiopian workers face-to-face. Translators were used to make sure they could express themselves without any difficulty. Meanwhile, to ensure that the survey captured the ESG performance of Chinese-invested enterprises from multiple angles and in an all-round manner, the project team also interviewed large industrial and civil society stakeholders, such as the Ethiopian Industrial Parks Development Corporation (IPDC), the Ethiopian Investment

Commission (EIC), international NGOs such as the Stockholm International Water Institute (SIWI) and Solidaridad, and international brands.

The participation by, and feedback from, the abovementioned stakeholders made it possible for the baseline study to identify critical gaps and opportunities with the Chinese-invested textile businesses in Ethiopia. The current industrial distribution, risk-based due diligence performance, level of knowledge and the scope of sustainability standards and applications in those industries were assessed, which gave an insight into the opportunities and shortcomings in sustainability and ESG performances and the need for appropriate capacity-building measures. This process also helped scrutinize the *status quo* and challenges to compliance with ESG standards among Chinese-invested and other targeted textile industries in Ethiopia, and recognize stakeholders' needs and the expectations. For example, it enabled the identification of industry workers' needs for better ESG standards. Prior to the baseline study, Chinese-invested companies have reported frequently facing challenges in understanding local ESG-related laws and regulations and stakeholder engagement channels. The study's findings provided a solid foundation for next-step interventions through capacity building for company managers and investors and policy recommendations.

### ***Capacity building***

The capacity of target companies and supporting stakeholders to understand and implement ESG principles and standards was improved through workshops on awareness creation of the issues and needs as identified in the baseline study, for instance, labour rights and community engagement, and through industry-specific and tailored training. Moreover, an upgrading of the technical capacity of selected experts among local stakeholders, including TGiRDc, academia and consulting companies to support textile and garment companies took place through the provision of training-of-trainers programmes.

According to consultations and interviews during the baseline study, especially of workers and local communities, the capacity need of the target companies or the expectations of stakeholders in the "S" dimension of the ESG focused to a considerable degree on topics including trade unions and collective bargaining, labour discipline and internal communication and complaints, labour relations and working conditions; while in the "E" dimension, water management and wastewater treatment, solid waste and chemicals management, energy management and climate change adaptation, were emphasized, and these were exactly the contents of the training of the capacity-building stage, over the course of six sessions. In these sessions, in addition to knowledge, extensive experiences and cases of participating companies were also shared and discussed.

A total of 16 Chinese textile and garment companies, 10 Ethiopian textile and garment companies, and 5 other Asian and European FDIs were targeted to increase awareness of the ESG principles and standards, and to provide capacity-building programmes, including action-plan preparation for ESG standards implementation, monitoring and performance improvement actions. Target companies showed their commitment to, and interest in, the learning process and in understanding of the ESG standards. This relates to MSE as embodied in the due diligence aspects that are frequently associated with the social element of ESG. Because the training topics were identified through engagement with trade unions, workers, and local communities, they fit well into the challenges and needs of the companies. The actual participants of the trainings were managers and workers' representatives who dealt on a daily basis with human resource management, health and safety and environmental protection.

The involvement of workers, unions, local communities as well as managers reflected on the outcome and evaluation of the training. Evaluations showed that the participants found the training to be quite relevant. Most participants expressed a high degree of recognition of the practicality and applicability of the training materials and cases, as well as the structure and logical clarity of the training content. During the training and exchanges, some companies identified the need for further improvement, and proposed to invite trainers to conduct special in-depth training and on-site guidance for their enterprises, and these extensions of capacity building, as proposed by companies, actually went deeper and more practical to topics such as cross-cultural integration and community-level communication, gender equality and women workers' empowerment, and improvements to the management system.

Furthermore, as a response to the findings of the baseline study, exposure missions to local and international textile and garment companies were organized, so that direct contact and lasting engagement could be established.

### ***Knowledge management***

One of the most important and frequently mentioned concerns of various stakeholders involved in the baseline study and capacity-building stages concerned the continuous improvement of companies and their interactions with stakeholders once the specific training project was phased out.

The project adopted three knowledge management ways to tackle that challenge. Firstly, 15 experts from local supporting entities were targeted to improve their competence through Training of Trainers arrangements so that they could take over and retain the implementation of the capacity-building modules to support local and international textile and garment companies, and, as a side effect, the workers and the local communities in which they live. CNTAC and TGiRDc signed a Memorandum of Understanding to forge a strategic partnership, which would enable CNTAC to assist TGiRDc in promoting ESG standards among textile companies in Ethiopia, even after the project was completed.

Secondly, a digital knowledge management hub was developed as a robust knowledge and information dissemination strategy to support enterprises in gaining access to training manuals, global textile and garment-related information, and stakeholder engagement opportunities. The hub offers a convenient platform to improve the capacity of relevant public sector experts and industry management and technical teams. It can be used as a learning and guiding platform for the planning and implementation of ESG standards, providing information on best practices from other countries and industries. Moreover, the hub set up a designated function for “engagement and interactions”, which, on the one hand, facilitates information exchange among the Chinese and other Asian and European FDI, and local companies, including providing contacts of international brands and their ESG requirements, so that business-to-business communications can be enabled and business partnerships may be established; and, on the other, provides a channel for other key stakeholders, including workers, civil society organizations, and trade unions, to learn and exchange with local and international companies.

Finally, taking advantage of the innovative and inspiring multilateral cooperation framework and opportunities provided by the project, eight major Chinese-invested textile and garment enterprises in Ethiopia joined hands to establish the Alliance of Chinese Textile and Light Industries in Ethiopia for Sustainability (ACES), which was committed to promoting mutual learning, industrial chain cooperation, and communication with stakeholders. The ACES serves



not only as a lasting bridge between Chinese-invested companies and local stakeholders, facilitating face-to-face dialogue and cooperation, but also as a connection between China and Ethiopia. For instance, with the support of ACES, several exposure missions to China for Ethiopian officials, and business and civil society representatives, were organized as a key strategy to sustain and expand cross-border exchanges on ESG in textile and garment industries, and to promote further responsible investment from China.

### **Reflections and prospects**

The “Sustainable Textile Investment and Operations in Ethiopia” project is a testimony to the fact that integrating the involvement of a diverse group of stakeholders, including vulnerable and affected ones, can provide legitimacy and inspiration to the purposes and design of responsible business-related projects for transnational value chains. The project in Ethiopia was a systemic response to a long-term call from some critical stakeholders such as local workers, communities, and social organizations for responsible investment and sustainable operations in the local textile and garment industry, a big part of which is owned by Chinese investors. In addition, such a response recognized and enhanced the legality of the demands that were identified and reflected in the multi-stakeholder process, and hence also enlarged the scope of the stakeholders for onward meaningful engagement.

Based on such legitimacy, meaningful engagement of stakeholders, including workers, unions and local communities, could then enable and empower the actions of project partners. As in this project, the multi-stakeholder process helped identify and forge partnerships, empower the partners with knowledge on needs and capacity assessment, formulate action plans, and create an enabling environment for the implementation of the envisaged activities, including those addressing the needs voiced by workers, their representatives, and other civil society organisations.

The extent to which onward activities to ensure MSE for affected stakeholders, such as workers, will be integrated into project implementation will decide the quality and realization of project purposes. In this project, the baseline study became a functional tool for awareness, amongst others, of needs and practices related to MSE. Because of the expectations and requirement as reflected in the survey, the target textile and garment industries in Ethiopia were actively involved throughout the project formulation, the organization and delivery of training, and during the preparation of ESG performance management action plans for individual companies. The commitment that was observed during the planning and execution process was also reflected in participants’ responsiveness and willingness to openly share information on challenges. Their commitment considerably exceeded that which had been envisaged during project inception. This can be seen as an indicator of the need for such involvement, as something to build on to ensure the successful onward implementation of this and other ESG improvement programmes.

Last but not least, the involvement of the diverse group of stakeholders, including workers and their representatives, can underpin the longer-term buy-in for a project and guide the way for its upscaling and upgrading. The involvement of stakeholders, including of workers, is a living practice that should be continuously evolving along with the progress of interventions. Accordingly, new findings on how such involvement can be meaningful for affected stakeholders can come provide guidance for the upscaling and upgrading of further actions. Upon the completion of this project, further engagement among the involved partners and other key stakeholders led to new proposals on future interventions. Such proposals included

providing tailored technical capacity building for experts of supporting organizations and management staff, upgrading TGiRDc facilities and expanding its services to provide full ESG technical support to textile companies, as well as upgrading the local ESG policies and performance inspection of the various government bodies.

However, the baseline study and its background also serve as reminders of the importance of integrating MSE in activities to develop transnationally invested or operated industry activities affecting vulnerable stakeholders, such as workers, unions, and local communities. The emphasis paid to working conditions in the Ethiopian textile sector was an impetus for the involved international partners, including the CNTAC, to explore opportunities for integrating workers and their representatives in the needs assessment and for the purposes of capacity building. Even against such a backdrop, an MSE awareness cannot be taken for granted.

The project also underscores the constant need for awareness of ESG standards, especially those on working conditions and workers' rights, when it comes to labour-intensive sectors such as textile and garments, and the meaningful engagement of workers and their representatives in unions in the design and implementation of invested industry projects. This is also a key learning from the project for the involved expert and industry organizations. In the case of the CNTAC, a key lesson emerging from the project is how in its ESG-related initiatives, projects and partnerships, constant attention must be paid to the meaningful involvement of (affected and potentially affected) stakeholders, and how this is realized in practice.

### **Note**

- 1 For instance, the Government launched the second phase of the growth and transformation plan (GTP II) in 2016, aiming to generate \$1 billion in export earnings and over 300,000 employment opportunities, all originating in the textile sector, see at: <https://ethiopia.un.org/sites/default/files/2019-08/GTPII%20%20English%20Translation%20%20Final%20%20June%2021%202016.pdf>.

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## **PART IV**

# Research and Methodological Perspectives



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# CONSIDERING RESEARCH PARTICIPANTS AS ‘AFFECTED STAKEHOLDERS’

## Implications for Methodological Choices and Meaningful Engagement Outcomes

*Nathan Andrews and Sulemana Alhassan Saaka*

### Introduction

A typical definition of stakeholder engagement entails “the process of involving individuals and groups that either affect or are affected by the activities of the company” (Sloan, 2009, p.26). This understanding directly aligns with Freeman’s (1984) original notion of stakeholders being characterized as groups or individuals who can affect, or are affected by, a company’s operations. Within this context, engagement with such groups or individuals involves initiatives undertaken to maintain an “ongoing and fluid level of acceptance by stakeholders, at multiple levels” (Mercer-Mapstone et al., 2017, p.347). The Organisation for Economic Co-operation and Development (OECD) defines stakeholder engagement as “an effective activity for identifying and avoiding potential adverse impacts of an extractive operation, appropriately mitigating and remedying impacts when they do occur, and ensuring that potential positive impacts of extractive activities are optimised for all stakeholders” (OECD, 2015, p.10). To be clear, stakeholder engagement does not occur only in the context of extractive activities. But multiple research and other studies demonstrate that such activities are prone to potentially adverse impacts, and this is why the sector is often a subject of engagement that involves affected individuals or groups, including communities.

The usage of ‘effective’ in the OECD definition above is noteworthy because the scope, depth, and effectiveness of stakeholder engagement remain issues of debate in both the scholarly and policy spheres. As Buhmann et al. (2024) highlight, although the idea of meaningful stakeholder engagement (MSE) is important to individuals, communities, governments, companies, and a range of organizations operating at different scales with varying forms of power to influence the practice of stakeholder engagement, we cannot assume MSE has the same meaning and implications in ‘local’ contexts where people’s lives directly intersect with corporate activities. This means that the ‘meaningfulness’ of stakeholder engagement cannot be taken as a given even within the context of well-established processes that may be characterized as ‘best practices’ or even ‘bottom up’ (see Andrews & Essah, 2020; Owen et al., 2022). Our focus in this chapter is on such local contexts and on affected stakeholders, with the goal

of shedding light on why the scope and choice of research methods for community-engaged research are important.

Within a context where researchers hold and exert power over their research subjects (e.g., individuals or groups who are being observed or interviewed), research can be ‘extractive,’ which undermines the meaningfulness of the process for stakeholders involved in research (see Kirby et al., 2006; Andrews & Bawa, 2019). Kirby et al. (2006, p. 1) characterize this knowledge–power dichotomy in the following way:

We live in a world in which knowledge is produced and used to make change, inform others, support a perspective, or justify an action. Hence, the question of who produces knowledge and uses knowledge is central to understanding how power is created, taken, or maintained. Being able to produce knowledge, then, is a route to power, empowerment, and influence.

The above observation underscores the dangers of an ‘extractive’ research practice where the researcher often wields power at the expense of research subjects. The statement “People come and go but we don’t see anything,” for instance, exemplifies the challenges of making researchers accountable or aligning the research process with broader social change goals (Andrews & Bawa, 2019). This chapter is borne out of concerns around the unequal power relations between researchers and research participants that has implications for the meaningfulness of the research process as well as the outcomes of research, which could include the desire for social change.

In considering research participants as affected stakeholders, the primary question we ask is as follows: what are the methods that can facilitate meaningful engagement with researched communities, and how do we go about implementing these methods to meaningfully engage with affected stakeholders? In other words, how do we design research with affected stakeholders in a way that is meaningful to research participants and what is the implication for broader MSE outcomes? To answer this question, the rest of the chapter proceeds to examine the ethics of care and responsibility that require researchers to constantly reflect on their positionality and power in social science research. This is followed by a review of some stakeholder-engaged research methods, drawing upon our typology for what we characterize as a spectrum of engagement intensity. The next section briefly outlines some implications of stakeholder-engaged research followed by a concluding section that provides reflections on some of the challenges involved in choosing which methods to employ.

### **Ethics of care, responsibility, and the power of ‘knowledge holders’ in research**

Instead of a broader discussion of research ethics, which is partly covered in Fonseca et al. (2024), this section of the chapter is more concerned with a subset of research ethics that focuses explicitly on ethics of care and responsibility towards those considered as ‘research subjects’. In so doing, it is apt to begin with some brief observations that underscore the powerful nature of knowledge, which informs how such knowledge is generated or produced in researched communities. First, Luker (2010, p.8) posits that “knowledge is power, and social scientific knowledge is a special kind of power, because much of the larger society still thinks we somehow embody truth with a capital T.” The notion of ‘a special kind of power’ emerges from the privilege researchers gain for ‘truths’ they are considered to know based on both their years of higher education and direct experience of studying specific things in their areas of expertise, which also underpins the knowledge-power dynamic briefly discussed in the introduction.

We believe researchers examining meaningful stakeholder engagement must reflect on how their own practices of data collection, knowledge creation, and knowledge dissemination can embody 'best practices' that diffuse power imbalances. Researchers must be reflexive and accept the fact that "people have expert knowledge and deep insight into their own lives and communities" (Palaganas et al., 2017, p. 429). They must recognize local knowledge as knowledge through a learning process and active un-learning by all parties (Yeh, 2016). These processes of learning and unlearning are, therefore, important features that should be part of meaningful interactions with people, whether in the context of research or other organizational MSE initiatives.

Ethical considerations are crucial in research involving human subjects because the validity of a study is often reliant on building close and lasting relationships with researched people and communities (Carpenter, 2018; Reich, 2021). Although participatory research methods champion social justice to influence social change (Brannelly, 2018), legitimate concerns exist around how they may merely reflect tokenism and co-optation in decision-making (Groot et al., 2019) or mask possible oppressive activities, further exacerbating the marginalization of researched people. Within the context of community-based participatory research, for instance, O'Sullivan et al. (2023, p. 162) note that the ethics surrounding terms of engagement "requires attention to *who is engaged with and how the engagement is enabled and structured.*" Such principles of engagement have ramifications for the outcomes of engagement to be experienced by affected stakeholders.

Emanating from feminist theory, ethics of care consists of several critical issues, including paying attention to marginalization and inequality, the need to induce change and interrogate care practices, and solidarizing with disadvantaged groups or affected stakeholders (Brannelly, 2018; Brannelly & Boulton, 2017; Groot et al., 2019). Ethics of care also emphasizes compassion and empathy and is applied in different fields to promote social justice (Brannelly, 2018). The key point is that researchers must constantly find their way around the challenges and dilemmas surrounding ethics, from when a research project is conceived until it is complete. Groot et al. (2019) argue that creating a framework for care ethics gives us a contextual perspective and understanding of how to respond to possible ethical problems in research appropriately. Consequently, ethics of care provides the platform for researchers to recognize and assess the probable impact of unequal power relations between them and those being researched and to develop their research in ways that can harness social change (Reich, 2021; Brannelly, 2018). In essence, ethics of care also implies ethics of responsibility and accountability, which may require researchers to 'leave it better than they found it.' For instance, being mindful of care ethics requires researchers to carefully determine what information they must disclose or omit to protect participants. In dealing with affected stakeholders who may be considered 'vulnerable' in many respects, such ethics of care and responsibility remain an important consideration throughout the research process.

### **The scope of methodological approaches for meaningful stakeholder engagement**

As Buhmann et al. (2024) note, the concept and practice of MSE cut across several areas of interest, including impact assessment, organizational studies, stakeholder theory, business ethics, community development, natural resource management and governance, global governance, and international law, among others (see also Kujala et al., 2022). This cross-cutting relevance means that research methods are varied, in some cases even eclectic. In this section of the chapter, we explore some of these methods used in researched communities to investigate various social phenomena. We begin by providing an initial spectrum that helps us



organize the different research methods along the lines of their intensity of engagement with affected or impacted communities, which may have a consequential effect on the outcome of the engagement process.

We begin on the premise that research that involves ‘human subjects’ are all meant to engage with people or communities in one way or another and, therefore, the spectrum of engagement intensity is only a function of how far a researcher seeks to push their methods beyond what is more commonly used or done in their field of study. Also, engagement intensity is presented here as a spectrum because something that starts off as mid-level engagement, for instance, could tilt to the left or right depending on the ongoing techniques a researcher seeks to embrace or explore in their project. This understanding should help us avoid a unidirectional interpretation of this spectrum; in fact, the typology shown here can be regarded as an ‘ideal type’ given that there is no perfect form of engagement out there as can be seen from the discussion below of the pros and cons of various approaches (see summary in Table 28.1). The same goes for the outcomes of

*Table 28.1* The Promise and Pitfalls of Some Stakeholder-Engaged Research Methods

<i>Research Method</i>	<i>Engagement Intensity</i>	<i>Promise</i>	<i>Pitfall</i>
Interviews	Low engagement	Enhanced agency/voice as part of a ‘mutual learning’ process and communal buy-in and understanding.	Opportunity to gather detailed/ varying information leads to challenges with data reduction/analysis.
Ethnographic methods (participant observation)	Low to mid-level engagement	Stakeholder-engaged ethnographic methods provide opportunities for meaningful partnerships.	Orientation of research can be individualistic, especially in the case of sole reliance on participant observation.
Multi-stakeholder forums and focus groups	Mid-level engagement	Promote good governance practices by involving stakeholders in decision-making and knowledge creation.	Challenge of navigating power imbalances that can compromise meaningful participation.
Community-based research	High engagement	Community empowerment and capacity building through an authentic process of participation.	Lack of time and resources to effectively engage the community throughout the research process.
Knowledge co-creation	High engagement	Promotes accountability and transparency, leading to greater legitimacy, credibility, and communal support for the research.	Power and conflict tussles emanating from complexities around contested interests of stakeholders.
Feminist and gender-based methods	High engagement	Embracing diversity and intersectionality and empowering participants for social change.	Unequal power relations between researchers and participants can limit emancipatory expectations.
Photo elicitation and photovoice	High engagement	Visual reflexivity leading to empowerment and social action.	Complexity of data synthesis and ethical issues of confidentiality and anonymity

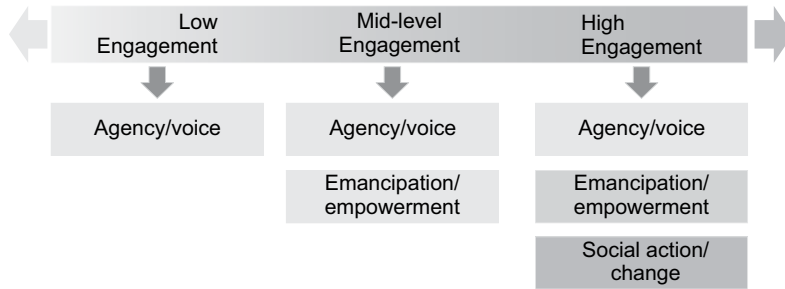


Figure 28.1 Spectrum of Engagement Intensity and its Outcomes

Source: Authors' configuration. Many thanks to Alberto Fonseca for helping us refine an earlier draft of this Figure.

engaged research, which, ranging from agency to emancipation to social action or change, tend to have multiplier implications as researchers increase the level of engagement intensity.

To reiterate, the idea of an 'ideal type' represents a normative configuration of what *could be* instead of *what is*. This means that high engagement may be associated with the outcomes listed in Figure 28.1, but this association is not automatic; the same applies to other aspects of the spectrum. For instance, a deeper level of engagement can have positive implications for the empowerment of researched communities or affected stakeholders, but this does not automatically mean that such engagement would be considered meaningful by all stakeholders involved. The rest of this section attempts to use this typology of a spectrum to discuss various research methods that we characterize as being 'community-engaged' or 'stakeholder-engaged', including a discussion of their promise and pitfalls which are summarized in Table 28.1.

### Interviews

Interviews are human interactions or conversations involving two or more people where a researcher asks questions and seeks answers from respondents about their everyday interpretation of the world and life experiences (Knott et al., 2022). Due to their level of flexibility (Hamill, 2014), they are relied upon as one of the oldest methods in the social sciences to gather data in research communities. According to Maccoby and Maccoby (1954), interviews are "a face-to-face verbal exchange, in which one person, the interviewer, attempts to elicit information or expressions of opinion or belief from another person or persons" (cited in Brinkmann, 2022, p.1). Interviews may take the form of structured interviews, using an interview guide, open-ended and free-flowing, or semi-structured interviews involving a topic guide with a set time limit. Interview flexibility enables changes in question arrangements and their content evolution as the researcher intensely probes into initial answers for more insights or details (Hamill, 2014). The researcher's ability to ask useful or effective questions will influence the interview data's quality and robustness.

One of the reasons why interviews are used so often is their adaptability to both qualitative and quantitative research. Qualitative studies usually involve a purposive sample (sometimes

even drawing on snowball techniques) that is targeted for face-to-face, telephone, or virtual engagement (e.g. Zoom, Teams, Skype). Survey interviews represent a superficial form of community-engaged research because of the reliance on closed-ended questions that have predetermined responses for participants to choose from. Interestingly, mainstream stakeholder engagement embodies this feature, especially in cases where affected communities feel they are being offered ready-made decisions and plans instead of a platform to generate a truly bottom-up perspective (see Andrews, 2013). This is another example of when stakeholder engagement processes mirror research practices and vice versa. Yet, the type of interview that is of importance to this chapter is one that is more stakeholder-engaged – one that engages with the experiences and perceptions of affected stakeholders.

Due to their potential to aid researchers' comprehension of contemporary challenges and offer community-based solutions, stakeholder interviews are now widespread. Giving people a chance to speak creates a feeling of being heard; the 'we are in this together' spirit gives stakeholders a sense of purpose and influences their decision to commit to the project's success (Gibbons, 2022). Early stakeholder engagement and identifying potential challenges, as part of a process of 'mutual learning,' also saves time (Sherriff et al., 2019).

We characterize the engagement intensity of interviews as low because the nature of one-on-one interviews, for instance, is individualistic in orientation. This is because interviews are a form of interaction between the researcher and those who are being researched and even though it does enhance agency, these 'agents' are specific members of a wider population whose shared perspectives may be counted as a reflection of the broader social reality. In other words, an interview is a community-engaged research method, but the degree of engagement may be limited, affecting the scope or coverage of the eventual outcome. Additionally, interviews often entail the extraction of respondents' information in a manner that ends up benefitting the researcher more than researched communities, which is an attribute that limits the potential of mainstream interviews to ascribe to other elements on the spectrum such as empowerment and social change. Nonetheless, research with affected stakeholders should at least involve this method if the other more engaging techniques are not feasible, depending on the specific needs and constraints of the project. Here, too, deliberate sampling techniques can be used to ensure the diversity of both participants and perspectives.

### *Ethnographic methods*

Another community-engaged research method that is commonly used is ethnography. Ethnographic methods emerged from anthropology in the formative years of the 1800s as European anthropologists explored and studied different people and cultures in the colonized 'New World.' It was pioneered by Malinowski's (1922) study of communities in New Guinea (Ryan, 2017). Ethnographers used written descriptions, records, and photography to research traditional communities and cultures. Ryan (2017, p.2) defines ethnography as "the first-hand experience and exploration of a particular social or cultural setting on the basis of (though not exclusively by) participant observation." It is an interpretive approach that relies on description to allocate meaning to a group or culture. Essentially, ethnographers are embedded in the community and the study's social milieu to acclimatize themselves to the people's daily life experiences. They may deploy single or combined techniques, including observations and focus groups, to gather their primary data (Rhodes, 2016).

In ethnographic research, "participant observation" refers to the dual role of researchers as actors and spectators in the daily life activities of the community and people under study

(Wedeen, 2010). It requires the researcher to know the studied group, and a fieldwork notebook is used to record common or prevalent observations (Rhodes, 2016; García-Rosell & Hakkarainen, 2019). Despite the researcher's embeddedness in the study community or location, the project's orientation is still quite individualistic in the sense that the observations are from the researcher's perspective, informed by their understanding of what the community allows them to observe or participate in. This means that the 'thickness' of their descriptions or depth of their findings are a function of the permissiveness of the local context and the extent to which the researcher can quickly rise up to the status of what we can refer to as an 'outsider native'. As a method, we place participant observation in particular on the low-engagement intensity end of our spectrum since it is primarily based on the researcher's perspectives based on their place-based experiences.

Having said that, many instances of multi-stakeholder ethnographic studies exist and ethnography also typically includes a suite of methods such as in-depth interviews and focus groups that are more inclusive of the perspectives of affected stakeholders. Working on independent projects, García-Rosell and Hakkarainen (2019) conducted some of such studies in Finland's Lapland region between 2006 and 2008 to develop and deepen local tourism services. They envisioned building local capacity and knowledge creation as critical to sustainable tourism development to boost the area's economic and social transformation. The studies were guided by six mixed principles in which participants were seen as co-researchers, leading to locally outlined priorities and practical knowledge creation. The overall goal was to produce more significant impacts, even though the social action element of this method (e.g. in terms of flipping power over to the less powerful) may be rather latent. As a result, ethnographic methods (beyond our description of participant observation above) can be associated with mid-level engagement intensity due to its orientation towards agency and empowerment.

### ***Multi-stakeholder forums and focus groups***

Globally, multi-stakeholder forums (MSFs) have gained popularity due to their capacity, at least in principle, to spur and enhance deep partnerships between various stakeholders to find standard solutions to problems that a single actor cannot solve (Sarmiento Barletti et al., 2020). Also known as town meetings, forums offer affected communities a platform to deliberate and provide solutions to identified challenges (ECLKC, 2023). Thus, MSFs are opportunities for different stakeholders, especially historically marginalized groups and affected stakeholders, to make decisions and plan appropriate solutions impacting their rights, lives and livelihoods (Sarmiento Barletti et al., 2020; Yami et al., 2021).

Even though some MSFs may seek to build local capabilities to improve members' negotiating and advocacy skills, their ability is influenced by varying conditions, including the different stakeholders' power relations (Yami et al., 2021). Forums are ideally usually facilitated by a respected discussion or group leader who is a good listener and can sustain the discussions in a relatively impartial manner (ECLKC, 2023). Explicit instructions regarding the forum's scope and limitation of decision-making powers are provided to check members' expectations since they can either function as powerful decision-making entities or as platforms to offer advice and feedback (Velasco-Sánchez, 2016).

Focus groups constitute a "small number of diverse stakeholders brought together to consider a topic with the goal of gaining representation from different groups (demographic and otherwise) that might affect the result" (Lempert et al., 2022, p.362). They originated as a

scientific enquiry for closing the gap between research and local knowledge (Cornwall & Jewkes, 1995; cited in O. Nyumba et al., 2018). Early evidence of applying focus groups in social research dates back to the 1920s and is associated with the renowned American sociologist Emory Bogardus (Wilkinson, 2004; cited in Hennink, 2013). The method has been used since the 1940s in Sociology and Psychology; the 1980s saw an increased usage in health and social science studies (Hennink, 2013). Focus groups emerged as researchers sought substitute techniques to address the challenges of orthodox one-on-one interviews.

A primary connection to MSE is that focus groups are a paramount public engagement and participation mechanism, facilitating communication between a few stakeholders (Pyrialakou et al., 2019). They involve facilitator-led discussions and engagement with purposely pre-selected respondents to gain a deeper insight into a social phenomenon. Also, they are supposed to provide participants with a conducive space to express their thoughts freely (Hennink, 2013). Focus groups differ from traditional interviews since they exclusively rely on the respondents' engagement and interaction to generate the necessary research data (Pyrialakou et al., 2019). Thus, its placement on the spectrum of engagement intensity is higher than that of interviews, but the approach is still not at the highest end of the spectrum. A mid-level position means that forums can serve as a way for people to speak, and they may even result in some form of empowerment that emerges from affected stakeholders' freedom to express themselves as part of a group discussion and a belief that their ideas count for something. However, in research contexts such as impact assessments the involvement and the entire process may turn out to be less meaningful to affected stakeholders if they do not perceive positive change to occur as a result of the views they express. This situation is similar to some of those mentioned in the chapter by Larsen and Buhmann (2024) and can result in similar frustration. For research, this may turn into research fatigue, as also suggested by Fonseca et al. (2024).

The extant scholarship discussed in this section has shown that MSFs represent an opportunity for more meaningful stakeholder engagement. They could even serve as a basis for direct social action if done right. Therefore, researchers involved in MSE work can capitalize on the potential of focus groups to serve as a platform for diverse perspectives and for the representation of marginalized groups and affected stakeholders that may not be captured through less-participatory approaches. This is where 'purposive sampling' in research can be used as a medium of inclusivity and equality. It suggests that the positive impacts for affected stakeholders depend on careful research design and implementation, with constant attention being paid to the experiences of those subject to research. In this regard, researchers may benefit from the key line of thinking that informs MSE in the context of risk-based due diligence: a part of a continuous process that is constantly attuned to identifying and addressing potential harmful impacts on affected stakeholders, keeping in mind the needs and concerns of those stakeholders (see Buhmann et al. 2024).

### ***Community-based research***

For decades, community-based research (CBR) has been increasingly used to address various challenges because it can create new organic knowledge and empower researched communities (Stoecker, 2003). The reasoning is that traditional research approaches fail to understand and proactively act on community issues that are multi-faceted and enduring when researchers are perceived as outsiders (Polanyi & Cockburn, 2003). Participatory research, the parent body of CBR, emerged from emancipatory philosophy and social action research. They are

rooted in the Northern Tradition of the 1940s, which prioritizes the participation of communities and workers in practices that cause changes in organizations and societies and the Paulo Freire-induced 1970s Southern Tradition, seeking to bring about social justice, power, and emancipation for marginalized and subjugated communities, in the Global South (Nguyen et al., 2020). CBR refers to a complementary research partnership among different parties that prioritizes multiple methods and knowledge sources intending to produce social action to promote social justice (Stoecker, 2003). In other words, it envisions research as a community needs-driven partnership for social action.

Polanyi and Cockburn (2003) note that while local communities recognize the role of research in addressing their challenges, they advocate for the need to be involved in studies that impact their lives and well-being. Therefore, CBR values blending knowledge with action to address the pressing social needs of communities (Lam & Mayuom, 2023; Puma et al., 2009). Although partnership among stakeholders is paramount in community-based research, the community is the source or origin of the research topic under consideration (Puma et al., 2009; Han et al., 2021). Community-based research also privileges engagements that build on the tenets of mutual respect, shared responsibility, reciprocity and co-generated goals and results (Lam & Mayuom, 2023).

CBR is one of the approaches with a high engagement intensity and the principles that inform this technique could benefit MSE research. As a participatory research method, the fundamental focus “is about who has the right to speak, to analyze and to act” (Hall, 1992, p.22; see also O’Sullivan et al., 2023). With the goal of putting less privileged/powerful people at the centre of the knowledge creation process, the pendulum of epistemic authority shifts from the researcher as the most powerful person in the room to local knowledge holders and affected stakeholders whose lived experiences provide the basis for any findings that could emerge from the researched communities. Following the traditional research approaches based on “an illusion of objectivity and scientific credibility” (Hall, 1992, p.18) fails to attain the emancipatory ideals of CBR, which serve as catalysts for social action and change. Not every project that is described as ‘community-based’ is designed with the key principles of CBR in mind. But if done well, it serves as a quintessential example of meaningful engagement with affected stakeholders in researched communities.

### **Knowledge co-creation as a participatory research method**

Knowledge co-creation is a participatory method that can be realized in community-based research. However, its application in a variety of contexts makes the technique worthy of a separate discussion. Utter et al. (2021) define knowledge co-creation as a process involving the intentional integration of knowledge and learning by at least two actors to generate insights and solutions that cannot be independently achieved without such collaboration. Therefore, co-creation privileges collaboration and partnership as the basis of finding meaningful solutions to stated problems. Co-creation is defined in this chapter as the coming together of academics, communities and other relevant stakeholders to collaborate and produce new knowledge based on shared experiences. This characterization is akin to some of the critical features of MSE discussed by Buhmann et al. (2024).

Co-creation differs from passively merging and exchanging varied knowledge and can be deployed as an efficient mechanism to connect diverse knowledge, especially historically marginalized knowledge. It promotes participatory learning and growth and reduces the real and perceived gaps or disparities across different knowledge forms and sources (Utter et al., 2021).

Effective knowledge co-creation will demand that stakeholders in researched communities openly engage and mutually build trust and partner to define a research problem (Ruoslahti, 2018; Han et al., 2021). This is expected to shape the focus and direction of the group and ensure that all stakeholders are well-informed regarding a project's progress or otherwise.

The term is applied differently in many fields, including value co-creation in business studies, experience-based co-design in design science and participatory research in community development (Greenhalgh et al., 2016, p.393). It has roots in the expansion of workplace democracy in Scandinavia in the 1960s–70s to include workers' rights to partake in designing IT systems at work. Fast-forward to the 2000s; co-creation has become popularized by the book *The Power of Co-Creation*, which posits that it is a transformative approach that results in a “win more–win more” situation for organizations (Ramaswamy & Guillard, 2010, p.71).

A clear connection with MSE is the fact that knowledge co-creation with multi-stakeholders can be described as a ‘theory meet practice’ phenomenon, resulting from the assemblage of people with varying knowledge and practical background experience into a single team. Depending on the type of projects involved, the timing of stakeholder engagement may be early, around when the problem is formulated, or late when the solutions are being evaluated. However, ongoing and continuous stakeholder engagement generates improved results, higher ownership, and increased trust levels (Pappas et al., 2023). Stakeholder inclusiveness refers to the degree of involvement of stakeholders with varied perspectives and, while diversity in stakeholders can aid in producing quality knowledge, it can also increase the research project's complexity since affected stakeholders may have distinct needs and preferences. Managing expectations and navigating power dynamics are familiar to any deep method of stakeholder engagement. Therefore, knowledge co-creation requires a careful application of ethics of care and responsibility to ensure that the ultimate goal of a project (i.e. social action/change) remains the focus. Despite the business logic that some have applied to the concept (i.e. shared value or value co-creation), which does not often play out positively in corporate practice, co-creation as a research design and method falls within the high engagement end of our spectrum because it offers the grounds for agency and empowerment as part of a process through which a collaborative change-making process with researched communities can ensue. Yet, we cannot assume that knowledge co-creation automatically leads to better engagement outcomes. This is why careful research design is needed to ensure that the needs and contexts of the researched communities and affected stakeholders inform the entire process of co-creation.

### ***Feminist and gender-based methods***

The everyday life experiences of women matter to the practice of MSE, and feminist research methods advance this by challenging conventional and masculine-dominated practices, modes of inquiry, and knowledge creation/production (Saeidzadeh, 2023). Gender-based research approaches perceive gender as a social construct that affects a person's life entirely, including their social and intimate relations. As a result, they raise serious concerns about unequal power relations deeply rooted in prevailing social structures (Saeidzadeh, 2023). Critical to gender-based research is the belief that research methodology is a perspective instead of a specified method. Gender-based research methodology, as a perspective, can be leveraged to design innovative methods, and the multiplicity of methods enables creativity, suitability, and variation in the works of different scholars (Cook, 1983).

Feminist approaches share some common characteristics, including embracing women's diversity, desire for social change, research influenced by their own life experiences and establishing a bond with the people studied (see Kiguwa, 2019). Feminist methods empower women since they are not treated as objects of study but as participants who meaningfully contribute to producing knowledge. Researchers do this by reflecting on or positioning their own lived experiences (Kiguwa, 2019) as well as employing intersectionality to understand how gender intersects with other variables such as class, social status, ethnicity, race, sexuality, and religion to determine one's experiences (see Cornell et al., 2016). In other words, feminist methods provide the lens to examine the differentiated harms and benefits that may accrue to affected stakeholders based on gender and other social variables. In the context of resource extraction, for instance, this differentiation is crucial in showcasing that men and women have different experiences; therefore, the impacts of such activities are in no way uniform across the board (see Andrews et al., 2022).

So, what do feminist and gender-based approaches really mean for MSE? While feminist approaches have eventually made their way into business management and organizational studies scholarship (see Alvesson & Billing, 2009; Grosser & Moon, 2019; Bell et al., 2020), we often speak of meaningful stakeholder engagement without necessarily reflecting on what a gendered understanding of this concept could look like. In this volume, for instance, only two contributions explicitly deal with gender as an important analytical category (see Scabin et al., chapter 20; Rasmussen, chapter 29). In fact, mainstream definitions of stakeholders or 'affected communities' obliterate any differences between various groups, including vulnerable populations like women, youth, or persons with disabilities (Grosser, 2009). This approach homogenizes these groups and universalizes their experiences as something felt by all. However, social differentiation is needed to gain a deeper appreciation of how different members of the category called 'affected stakeholders' access the engagement process.

Feminist methods ideally belong to the high-engagement intensity end of the spectrum due to the shared goal of enabling agency, empowering people, and facilitating social change. However, within MSE, there is much work to be done. While there is a recognition in the business management and organization studies scholarship that a woman's point of view makes a difference on corporate boards in terms of potentially facilitating more socially oriented and ethical decisions as well as gender-aware sustainability reporting (e.g. Cook & Glass, 2018), it is not clear whether the points of view of women 'on the ground' whose lives have been directly impacted by corporate activities carry the same weight. This should also lead us to understand that not all women are in the same so-called vulnerable position because there are many women in positions of authority whose experience with processes of engagement vary vastly from those who experience certain forms of marginalization due to one thing or another. Thus, MSE research needs to be designed in a manner that is attentive to individualized local-level gendered concerns. To be sure, a gendered perspective on MSE could result in the demasculinization of engagement processes (i.e. a change from being activities that men tend to dominate or have more say in) and a feminization of the practice of engagement itself that recognizes women and other excluded populations in research communities that need to be given the platform to speak/act.

### ***Photo elicitation and photovoice***

In our daily engagement and conversations with people, we sometimes need to paint a picture of a scenario to extract relevant information from them. In research, photo elicitation and



photovoice are similarly crucial in deriving such information from participants (Hopkins & Wort, 2020). Photo elicitation emerged from Anthropology and was first used by John Collier in his studies in 1957 (see True & Facundo, 2022). The method involves a researcher introducing photographs during interviews, relying on visual information as a mutual focus between the researcher and respondents (Shaw, 2021). Due to its power to elicit and extract people's feelings, details and memories, photo elicitation generates various types of data and information compared to conventional interviews. While minimizing misunderstanding, it hones respondents' memories and directs attention to specific experiences that may not come to light without the imagery.

Emanating from participatory action research and critical consciousness, Caroline Wang and Mary Ann Burris advanced the method of photovoice in 1992 to empower 'passive' village women in China's Yunnan Province (Hopkins & Wort, 2020). Photovoice is defined as "a process by which people can identify, represent and enhance their community through a specific photographic technique" (Wang & Burris, 1997; cited in Bautista Garcia-Vera, 2023, p. 62). As a technique, researchers and participants personally record, meaningfully dialogue, and disseminate their lived experiences by leveraging the power of cameras. Photovoice prioritizes collective authority and ownership of results, empowerment of researchers and interviewees, and championing policy changes (Bugos et al., 2014; True & Facundo, 2022).

In essence, photovoice is an innovative mechanism that highlights people's voices and brings about social action by inspiring respondents to snap pictures of situations to solve problems (Hopkins & Wort, 2020). By doing so, photovoice projects create awareness and improve dialogue through participant reflexivity (Bugos et al., 2014). Unlike ordinary conversations, visualization serves as a mechanism for vulnerable populations to convey their needs, challenges, and viewpoints on societal issues that impact them. The combination of observation and survey methods are the main similarities between photo elicitation and photovoice. They both include photography and narrative discussions, using visual and verbal cues, and they empower research participants to share their thoughts, perceptions and beliefs using such cues (Bautista García-Vera, 2023).

While empowerment is the instrumental outcome of the social action that could result from the application of these methods, it is still very challenging to prove if an activity is genuinely empowering because the research does not set measurement parameters to assess people's levels of empowerment (see Hopkins & Wort, 2020). Similarly, it is difficult to automatically characterize these stakeholder-engaged visual research methods as being meaningful for the researched communities involved. But because stakeholder engagement does not often account for all marginalized groups, including those with different abilities, visual methods such as photovoice and photo elicitation can open spaces for inclusive and meaningful engagement. Since these two approaches emerge from participatory action research, they are invariably positioned on the higher end of our spectrum of engagement intensity. These methods can turn passive agents into active and empowered knowledge co-creators, as the process of reflexivity enables affected stakeholders to discuss problems and think about how pictures can bring about possible changes (Hopkins & Wort, 2020). Riding on the notion that a picture can say or mean a thousand words, we also posit that photovoice and photo elicitation have the potential to enable higher engagement, particularly for visual learners in researched communities who express themselves best through imagery or those with specific disabilities that limit their active participation in purely verbal forms of engagement, or even for younger members of a population (see Shaw, 2021).

### **The implications of stakeholder-engaged research methods**

This brief section considers the implications of some of the identified research methods, focusing on some of the benefits and challenges of these methods. First, where these methods are efficiently deployed, they aid in empowering and building the capacity of the affected people and communities (Esmail et al., 2015; Nguyen et al., 2020; Polanyi & Cockburn, 2003; Ross et al., 2010). This occurs only if these affected stakeholders are authentically involved in the various stages of the research (Andress et al., 2020). In some instances, research design and data collection training programs may be organized for community participants to boost their contribution to the project and their overall capacity as research collaborators (Ross et al., 2010). Feminist methods, for instance, are good at empowering disadvantaged people since they are not treated as objects of study but as participants who meaningfully contribute to knowledge production. Many studies in the health and medical sciences observe that patients are empowered regarding their healthcare when/if the research incorporates their insights and viewpoints, thus giving them a sense of investment in the study (Cottrell et al., 2015). Such direct outcomes in health and medicine are often not always tangible in social science research, hence the need to be mindful of research design and the methods one uses to engage affected individuals and communities.

Second, the involvement of affected people and communities in research projects results in the development of implementable solutions as it generates their support (Han et al., 2021). The reasoning is that including those affected brings in their perspectives and helps convince them to accept/support the project. The buy-in element is crucial because giving people a chance to speak creates a feeling of being heard. Relatedly, some methods, especially knowledge co-creation research, promote stakeholder accountability and transparency (Esmail et al., 2015). Constant engagement with researched communities can assure them that resources are allocated in the public's interest, leading to greater legitimacy, credibility, and communal (members') support for the research (Powell & Vagias, 2010; Han et al., 2021).

Third, where thoroughly implemented, some of the above methods create fresh knowledge as they privilege collaboration and partnership over extracting information from research participants (García-Rosell & Hakkarainen, 2019; Lempert et al., 2022; Goodman et al., 2017). Participants are able to contribute meaningfully to the research as they share and learn new skills and ideas during the research process. More importantly, the bottom-up multi-stakeholder approach of some of these methods can lead to knowledge creation as it provides an avenue for the involvement of stakeholders in data analysis and interpretation, ultimately creating opportunities for meaningful partnerships between researchers and affected stakeholders or researched communities (Watts-Englert et al., 2016).

However, researchers and stakeholders deploying these methods to address critical problems may encounter several challenges, including issues of power and conflict tussles that may emanate from complexities, clash of personalities, and a multitude of contested interests (Andress et al., 2020; Brannelly, 2018; Greenhalgh et al., 2016; Saeidzadeh, 2023), time constraints and the lack of resources which may comprise the quality and meaningfulness of a research project (Lempert et al., 2022; Puma et al., 2009; Ruoslahti, 2018), and the challenge of ensuring confidentiality and anonymity, primarily when data is sourced from known/closed individuals by persons from the community (Ross et al., 2010). While adopting deeply engaged research methods may lead to empowerment and capacity building, implementable solutions, and the production of fresh knowledge and insights, the challenges briefly noted

here can collectively impact the commitment levels of affected stakeholders and the veracity of research findings. This implies that what may have started as a meaningfully designed process could end up being less meaningful for researched communities and other stakeholders involved.

### **Concluding reflections: the challenge of deciding on methods for stakeholder-engaged research**

The discussion in this chapter has underscored the fact that there is no dearth of approaches for stakeholder-engaged research, given that these techniques go beyond what have been described here to include art-based methods, Indigenous methodologies, and other unconventional approaches that are place-specific. Employing our spectrum of engagement intensity, we have highlighted some of the key principles that could inform the process of making research more meaningful for those involved in or impacted by research, with the caution of not assuming that engagement outcomes are automatic or fixed. In other words, the history of ‘extractive’ research practices imply that research cannot be expected to ‘do good’ by itself; thus, careful attention must be paid to research design and how it incorporates the needs and contexts of affected stakeholders. One thing that seems clear is that, considering the pros and cons of each of the methods discussed (as summarized in Table 28.1), deciding on which approach to employ can be a daunting task because there is simply no perfect way of undertaking research that can be considered to engage with respective stakeholders meaningfully. Yet, we must try.

A final question worth asking at this juncture is as follows: Why are some methods more popular than others, and what is the implication of one’s choice of method for the outcomes of stakeholder-engaged research? Answering this question reveals several factors – personal, ontological or epistemological, pragmatical, institutional, and monetary issues – that inform researchers’ choices. One of the main issues is publication potential, which tends to be a primary consideration for academic research that is not ostensibly community-driven from the outset. While researchers may be interested in engaging in research that brings about social change (though social change is admittedly not always the goal of research), they face the challenge of reconciling that interest with their academic progress and the proverbial ‘publish-or-perish’ culture. In most universities, the traditional kind of research, which is considered more ‘scientific,’ is still preferred over research conducted or co-created with individuals or communities involved in the research. The evidence suggests that such community-based research efforts are not adequately recognized in tenure and promotion processes (see Saltmarsh et al., 2019). A couple of decades ago, Polanyi and Cockburn (2003) documented experiences that suggested that while researchers wanted to undertake work to advance social change, they also subconsciously preferred committing their time to research partnerships that could be published in a journal. This means that the hard work of deep stakeholder-engaged research is left to the few whose work inherently needs to be of that character (e.g. projects involving Indigenous or other disadvantaged communities) or those who do not necessarily need another publication for promotion or tenure although they also struggle with making the research process and outcomes meaningful for researched communities.

Secondly, funding agencies also have their own demands and preferences that have direct implications for the choices researchers make in terms of research design and methods. Such

requirements around dissemination plans, for instance, shape the scope of research and how it is conducted. For instance, researchers face the dilemma of what Han et al. (2021, p.2) call “checking the box” to satisfy the standards or demands established by a funding agency vis-à-vis effectively involving communities and their partners in the research process to promote broader societal objectives. The funding requirement can sometimes influence and skew a project’s outcomes to favour the funding organization’s interests and desires (Polanyi & Cockburn, 2003).

Related to the issue of funding is the duration of research. Let’s face it: stakeholder engagement is hard work and, sometimes, there is just not enough time to engage various groups or affected stakeholders in researched communities meaningfully. Also, there is the challenge of time needed to recruit participants for a project (Puma et al., 2009). Some methods may require more time to recruit and even train them in complex situations. For instance, in photovoice, some participants may have to be trained to use a digital camera or a smartphone to capture pictures. In other instances (e.g. ethnographic studies), a local language would need to be learned in order to meaningfully engage. Our spectrum of engagement intensity shows that the higher the intensity, the more time and resources a researcher may need to commit to undertake a meaningful research project. Unfortunately, time then hinders both MSE in organizational practice and stakeholder-engaged research.

A final consideration is the issue of research control or ownership. A primary feature of community-engaged research is the need for all partners to see themselves as equal partners during the research. However, this kind of partnership can potentially undermine academic freedom, which is expected to put the control of research findings in the hands of the researcher – at least according to traditional research paradigms (Freeman et al., 2006; Goodman et al., 2017). Discussions over who controls the research are even more critical in Indigenous research, where there is strong advocacy for communities to control the study process, conceptualization, methods, execution, and findings, including how the data is analyzed (Williams & Shipley, 2023). The principles of Ownership, Control, Access, Possession (OCAP) recognize that researched communities must determine the research direction, who can access the information, and its use. This principle is also associated with the concept of self-determination, which simply means the right of communities to create knowledge that is informed by what they want or consider to be meaningful to them (Quinn, 2022). It is noteworthy that, while these principles have gained widespread attention and do help to address the ‘extractive’ model of research, the knowledge–power pendulum in many instances has not shifted far enough to expect that they truly undergird the operationalization of most community-engaged research.

Without casting accusing fingers or claiming to be better at using the most community-engaged methods ourselves, our goal in this chapter has been to reflect on the ‘state of the field’ regarding tried-and-tested methods for meaningful engagement in communities where research is undertaken. What the non-exhaustive list we have provided (see Table 28.1) suggests is that choosing not to employ an engaging technique cannot be justified based on the non-existence of options. We certainly have plenty of options, but significant constraints lead researchers to make choices that shape their research design and eventual outcomes for good or bad. Beginning from a place of humility and individual reflexivity, we can do better by seeing each new research project as an opportunity to improve upon the previous one and enhance the depth of engagement with affected stakeholders.

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# THE CRAFT OF MEANINGFUL STAKEHOLDER ENGAGEMENT IN SOCIAL SCIENCE RESEARCH

## Lessons from a Research Project on Leadership and (In)equality in Greenland

*Mette Apollo Rasmussen*

### Introduction

Meaningful stakeholder engagement emphasizes not only involvement and collaboration but also a focus on the relevance of the inquiry and thus the process of knowledge co-creation (Buhmann et al., 2024). As noted in the Introduction to this volume, meaningful stakeholder engagement should be explored as a concept and practice that can not only mitigate adverse social and environmental impacts, but also maximize positive effects (Buhmann et al., 2024). This understanding positions meaningful stakeholder engagement as a research approach requiring methodologies that recognize that research findings are more robust and impactful when stakeholders are actively engaged, and their knowledge and perspectives included. However, as also noted in the Introduction, knowledge is lacking on what exactly stakeholder engagement processes require to be meaningful and to be so from the perspective of those affected by impacts (Buhmann et al., 2024).

This chapter discusses the craft of conducting research to ensure meaningful outcomes for those involved, affected, or put at risk by an activity (Buhmann et al., 2024; see also Maher & Buhmann, 2019). It explores how meaningfulness is built up in the collaboration and negotiation with the involved interactants<sup>1</sup> (Blumer, 1969; Mead, 1934), and thus emphasis is on the practice of empirical work as a collaborative endeavor. Accordingly, the aim of this chapter is to discuss and develop an understanding of how stakeholder engagement becomes meaningful when conducting research on poorly articulated issues. It highlights how new understandings can emerge when stakeholder dialogues are facilitated with relevant reflections. The chapter contributes by formulating methodological considerations related to meaningful stakeholder engagement by adopting methodological understandings rooted in symbolic interactionism and pragmatism (Blumer, 1969; Mead, 1934). The central question addressed in the chapter is: *How can methodological perspectives based on symbolic interactionism support meaningful stakeholder engagement?*

The chapter discusses meaningful stakeholder engagement in the context of a study of leadership and (in)equality titled “Please, get the coffee! An empirical analysis of gender (in)

equality in Greenlandic organizations” (Rasmussen & Olsen, 2022). This study provides a frame for discussing how meaningful stakeholder engagement contributes relevant knowledge about a particular topic, and its social impact for stakeholders engaged in the meaningful dialogues.

The following section discusses how the “Please, get the coffee!” study emerged. Then follows a discussion on methodologies relevant for the perspectives of meaningful stakeholder engagement, and the complex challenge of developing relevant local knowledge. This is wrapped up in the conclusion, where it is argued that meaningful stakeholder engagement cannot be developed and implemented without ongoing, trustful relationships with relevant stakeholders.

### **The case: ‘Please, get the coffee! – an empirical analysis of gender (in)equality in Greenlandic organizations’**

This section works as an introduction to the study of (in)equality in Greenlandic organizations, and secondly as a reflective research note providing insights into the research processes.

The discussion of gender and (in)equality in organizations is often related to statistical discussion about representation and salary (Lansu et al., 2020) by counting the numbers of women in leadership positions and representation in decision-making (Andersson et al., 2021; Bruni et al., 2004). These data rarely lead to better understandings of (in)equality in organizations (Alvesson, 2009; Gherardi, 1995). Thus, we know little about how women thrive, get involved in decision-making, build and use networks, and practice leadership in organizations. These discussions are often addressed in rational manners, without including the focus of women’s everyday lives in organizations, or the problem of dominating male standards in the practices of organizations (Alvesson, 2009; Arnfjord et al., 2020; Gherardi, 1995).

The focus of (in)equality in Greenlandic organizations emerged from more general research on leadership activities in Greenland (Rasmussen, 2020, 2023; Rasmussen & Olsen, 2021). The research on leadership provided snapshots of gender (in)equality issues where female leaders elaborated on the troublesomeness of being a female leader. For instance, one female leader explained that “[...] when I mention (in)equality in the company, everybody turns silent”. And another said that you need “broad shoulders” to have a leadership position. These comments inspired a focus of (in)equality and asking more female leaders about their experiences of (in)equality and how they practice leadership.

In collaboration with the Gender Equality Committee (a parliamentary committee), and a small group of relevant stakeholders, we developed a research project with the aim of identifying and problematizing possible causes of (in)equality issues in Greenlandic organizations.<sup>2</sup>

Fifteen women were interviewed, all middle or top managers with extensive leadership experience from private, public, or government-owned companies. A focus group interview was conducted with six male CEOs who, qua their position, are involved in discussions of (in) equality. The explorative empirical approach was guided by broad research questions with the aim of wanting to understand (in)equality in organizations based on an interpretive and pragmatist approach (Alvesson, 2003).

The female leaders talked about experiences of sexism, which they often felt was not addressed in their organizations. Most of the time they feel obliged to ‘suit up’ to be able to navigate in masculine setups dominated by traditional and patriarchal understandings. The female leaders elaborated on their leadership practice and how it is related to problematization and understanding the ‘whole’ organization, which is often experienced as very opposite to

how male colleagues think. They find that competencies are formulated by men and with masculine connotations, making it difficult for women to be a part of some decisions. Decisions are often made in more unofficial settings, e.g. on hunting or fishing trips, where female leaders are not included, and then articulated into the organizational environment. This means that many decisions are discussed before female leaders are even involved. In the report (Rasmussen & Olsen, 2022), it is argued that there is a need for a broader, more nuanced, and pluralistic conceptualization of leadership and organizing. Female leaders consider unique situations which emerge in relation to activities, and thus they let go of the normativity related to best leadership practices. Generally, they try to make space for discussions which include differing perspectives.

In order to share and qualify the knowledge from the project, the Gender Equality Committee organized a public debate at the Cultural Centre in Nuuk in December 2022. The Chair of the Gender Equality Committee and six managers from the local business community participated as panelists. The debate was open, and approximately 50 people showed up and took part in the discussions.

I opened the event with a presentation of the main project findings, followed by brief reflections from the panel. The panelists discussed how working with (in)equality must be prioritized, but they are struggling to find ways to do this – both due to lack of knowledge and because they lack a vocabulary and a way to formulate the challenging issues they are facing.

Along the way, the facilitator opened the floor for questions and comments from other participants, and they had a lot on their minds. In fact, they ended up queuing to get hold of the microphone. Participants shared their experiences of (in)equality, and their impression that the discussion of diversity and (in)equality was absent in most organizations. There was a general push from the audience for the next step, asking the panelists for more precise actions in their organizations.

Subsequently, given that the discussions had been so relevant for its member organizations, the Greenland Business Association conducted a follow-up study, resulting in a report that included quantitative data about female representation in organizations and how the issue of (in)equality is addressed and on the agenda of Greenlandic organizations (Greenland Business Association, 2023).

Based on this study of leadership and (in)equality, there are relevant lessons to be learned about meaningful stakeholder engagement, and thus the chapter moves on to discuss methodological issues and implications related to meaningful stakeholder engagement.

### **Discussion: Developing methodologies for meaningful stakeholder engagement**

The study on leadership and (in)equality in Greenlandic organizations is exemplary in the way that it shows that meaningfulness emerges in a strong interplay between interactants and researchers. The researchers take the necessary time to familiarize themselves with the field of study and become involved in relevant discussions and activities. The research was informed by an interpretive methodology that includes interactants' understandings of their actual situations, which means that “we find out—not with perfect accuracy, but better than zero—what people think they are doing, how they interpret the objects and event and people in their lives and experiences” (Becker, 1998, p. 14).

Meanings assigned to actions, events, and processes related to (in)equality in organizations are interpreted both by the interactants involved and by the researchers who engaged in

conversation where interpretations establish arguments “for a particular way of understanding social reality, in the context of a never-ending debate” (Alvesson & Skoldberg, 2000, p. 276). As the perceptions changed, the inquiries and research questions changed accordingly. Thus, the research process illustrated in the study highlights how the researchers build a reflexive practice as the fieldwork progresses, and how new themes emerge as the researchers’ reflexivity progresses from superficial simplicity to profound simplicity related to the phenomenon (Weick, 2002).

Getting your hands dirty and immersing yourself in the practice of study seems to be valuable when thinking about meaningful stakeholder engagement. The value of getting familiar with the empirical context is highly recognized within symbolic interactionism (Blumer, 1969; Mead, 1934), and from this position of philosophy of science, the methodological implications related to the work with meaningful stakeholder engagement can be developed.

The following elaborates on how to incorporate methodologies, ideas, and practices from traditions rooted within pragmatism and symbolic interactionism (Blumer, 1966; Mead, 1934). Symbolic interactionism is concerned with joint actions because this is where you can study how meanings are organized and constructed. Joint actions are not considered a result of individual meaning-making but as a mutual and collective change and adjustment in meaning (Mead, 1934). Thus, symbolic interactionism points toward an understanding where self emerges in interaction with others and from the responses to and from others. Empirically, the focus of symbolic interactionism is toward the dynamic becoming rather than the static being (Mead, 1934, p. 198). Following the position of symbolic interactionism, in relation to meaningful stakeholder engagement, two themes seem relevant to discuss further: (1) how to qualify and (re)formulate the relevant research question; and (2) the role of the researcher.

### ***Qualifying the research question in meaningful stakeholder engagement***

Creating knowledge through reflexive interaction allows for more understanding of the topic to come to light. When engaging in the discussion of research methodologies and ethics, the emphasis is on including local knowledge (Arnfjord & Hovgaard, 2021; Denzin & Lincoln, 2014). Denzin & Lincoln (2014) focus on methodologies that make room for dialogue between local and critical scholars. They call for research strategies that develop inclusive and collaborative research practices. This means that the researchers and the stakeholders must find ways to figure out how to grasp processes of complexity related to the phenomena of study—and how to address these small structures and short moments (Weick et al., 2005).

Given the focus of wanting to understand how meaning emerges in the research process, two important aspects from symbolic interactionism are emphasized: (1) Meaning is situational and is understood and related to the given context; accordingly actions are to be analyzed with reference to the given context. For example, knowledge created as part of the project on gender (in)equality is related to the specific context; (2) The researcher stays open to new understandings and acknowledges that knowledge is preliminary and changing. This calls for an explorative approach if meaningful dialogues are emerging, keeping in mind that research “must be ethical, performative, healing, transformative, decolonizing, and participatory. It must be committed to dialogue, community, self-determination, and cultural autonomy. It must meet people’s perceived needs. It must resist efforts to confine inquiry to a single paradigm or interpretive strategy. It must be unruly, disruptive, critical, and dedicated to the goals of justice and equity” (Denzin & Lincoln, 2014, p. 3).

### ***The role of the researcher in meaningful stakeholder engagement***

The methodological position of symbolic interactionism is empirical. Blumer argues that researchers must stay close to empirical material and must be somehow embedded into the practices of those being studied (Blumer, 1969). Mead's (1934) concept of reflexivity directs focus toward the critical fieldwork encounters. Since "It is by the means of reflexivity—the turning back of the experience of the individual upon himself—that the whole social process is thus brought into the experience of individuals involved in it" (Mead, 1934, p. 134). The reflexive "turning back" in research provides access to new understandings if it does not lose sight of delivering explanatory abstractions, and provided it does not just report individual experiences.

Reflexive processes enable us to be self-aware not only of the context we are in but also of the context the other individuals are in. Because of this, it is possible to adjust our understanding of ourselves within this process and to change and evaluate our meanings and actions because of it. Hence, this process changes the self in the process of social experiences and activities because of the commitment to that process and the individuals taking part in it (Mead, 1934, p. 134). Thus, the individual re-interprets their own experiences from a new perspective in a process that has the ability to change understandings of the present.

As a qualitative interpretive framework, you can argue that symbolic interactionism is dependent upon and requires careful observations, an ability to pay attention to detail, a reflexive approach to examining how interaction occurs, and a questioning of meanings and routines. Symbolic interactionism, applied as an analytical grip, opens for an analytical description and interpretation of how stakeholders engage and make engagement valuable (see also Rasmussen, 2016). For the researchers to engage in these processes of interactions, they "should carry their hypothesis lightly and be willing to drop heavy tools in order to become more agile theorists" (Weick, 2002, p. 15). This leaves researchers with considerations when interpretations and decisions have to be made about the meanings encountered and the change of research questions. Here the change of direction is found to be both relevant and ethical in adherence to the process of meaningful stakeholder engagement.

Based on the above, I argue that meaningful stakeholder engagement can be supported by the methodological considerations that stem from symbolic interactionism, and this way of reflecting and challenging the research approach has potential to shed light on, and support, how meaningfulness emerges in an interplay among relevant stakeholders.

### **Conclusion**

The chapter started out with the aim of contributing to the research craft of meaningful stakeholder engagement by examining a study about leadership and (in)equality in Greenland. It ends with conclusions that could potentially add to the way we think about and conduct social science research in close collaboration with those affected and involved in situations of interest.

The chapter has identified processes of meaningful stakeholder engagement, with a focus on the research craft rather than the outcome or knowledge of the research. Although this is based on a single research project in Greenland, I find that the study is useful in explaining more broad questions of how meaningfulness emerges. It highlights how research is meaningful when it builds on, or adds to, existing knowledge, both empirically and theoretically.

The following sums up by creating answers to this chapter's question: *How can methodological perspectives based on symbolic interactionism support meaningful stakeholder engagement?*

The discussion in the chapter shows how processes of meaningful stakeholder engagement emerge when the topic—and thus the research questions—are carefully prepared in discussions with different stakeholders and engaged in conversations that can be used in future activities.

The study reveals how meaningful stakeholder engagement can be influential in organizational development. It creates a framework for including new articulations about the issue of gender and (in)equality in relevant interactions about organizational development despite the conflicting understandings and interests of stakeholders.

This means that the meaningfulness is often rather local, and relevant to the context explored. The researcher must consider that what is meaningful for some must not harm others. The point here is that knowledge created is situational and context-specific, but the processes of meaningful stakeholder engagement are more general. So, despite the study discussed in this chapter taking place in Greenland, the general understanding of the craft of meaningful stakeholder engagement applies to most research situations, contexts, and research topics. Nevertheless, the question of ethics should always be addressed and discussed in relation to the context.

Drawing upon this work, meaningful stakeholder engagement can be thought of as relationship building between active stakeholders who take an interest in a particular phenomenon. This way of conceptualizing meaningful stakeholder engagement in practice shows not so much how some stakeholders will be more significant than others, but how the knowledge and interests of stakeholders are related to relevant questions and better articulations of relevant aspects of the situations—in this case leadership and (in)equality. The relevant stakeholders are the ones who usefully bring their interest to attention and influence the elaboration of the topic.

The interactions set the scene for meaningful stakeholder engagement, and the argument could be made that meaningfulness cannot be developed and implemented without relationships with internal and external stakeholders. Thus, it is in the processes of interaction among several stakeholders that a research question is informed, changed, and developed, and becomes meaningful.

## Notes

- 1 Within symbolic interactionism and pragmatism, stakeholders involved in research processes are named interactants. Interactants are the ones who in practice engage in processes of interpretation and negotiation related to the subject of study.
- 2 The research project was funded by the Gender Equality Committee and Greenland Research Council.

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# ASSESSING MEANINGFUL STAKEHOLDER ENGAGEMENT THROUGH ETHICS STANDARDS

## Lessons from the Samarco Dam Break and its Operational-level Remediation Program

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### **Introduction**

Stakeholder engagement is an umbrella term for various processes and strategies applied by companies and governments to manage their relationships with diverse stakeholders (Kujala et al., 2022). While stakeholder engagement can bring short-term gains to shareholders, this practice can also help to create long-term value not only for shareholders, but also for stakeholders who are or can be adversely affected by organizations, especially when the engagement process is carried out meaningfully. Engagement with stakeholders has traditionally been understood to be part of business ethics and corporate social responsibility (Friedman & Miles, 2006; Freeman, 1984); however, the complexity of engagement that actually delivers value to affected stakeholders should not be understated (Greenwood, 2007).

As explained in the introductory chapter of this handbook (Buhmann et al., 2024), what constitutes ‘meaningful’ engagement from the perspective of affected stakeholders remains under-researched. In this chapter, we address this knowledge gap with an emphasis on the perception of communities that are involved in operational-level grievance mechanisms and related remediation activities. Closely related to the risk-based due diligence process and its expectations of meaningful stakeholder engagement (MSE), the provision of remediation is also a complex and under-researched process. Remediation is relevant when harm is perceived to have occurred. Grievance mechanisms handle complaints and may lead to remediation; but remediation can also come about as a result of other activities. Several studies indicate that remediation initiatives, whether implemented by companies or government authorities, are complex and often fail to adequately remedy the harm suffered by affected communities; or, in some cases, even lead to additional harm (e.g. Rogge, 2020; Aftab, 2016). In the business and human rights field, calls for non-judicial grievance and remedy mechanisms have been made in order to provide for speedier, simpler, and often less resource-demanding access and remediation for affected stakeholders (Buhmann, 2023). Non-judicial mechanisms may be



state-based or operational-level in nature. The latter means they are organized by and/or working from the company or project level. A non-judicial mechanism may issue findings or recommendations, but cannot pronounce an enforceable agreement. Still, their effectiveness vis-à-vis judicial mechanisms remains uncertain (van Huijstee & Wilde-Ramsing, 2020).

Yet, how to even start to assess whether the interaction, as a form of engagement, between affected people and a remedy mechanism is meaningful to those affected? By what standards can this be assessed? In the absence of specific standards and tools for that purpose, in this chapter we take inspiration from standards of research ethics. Such ethics standards were developed to prevent harm to the people that are to some extent involved in research projects. While there are obvious differences between research as an academic or professional activity, and relationships between remedy mechanisms and affected people, there are sufficient similarities in terms of objectives to identify and prevent harm to make it worthwhile to take research ethics as our point of departure for an analysis of the interaction processes and process design. By applying an ethics assessment to a specific case, we contribute to the emergent evolution of research and methods on MSE, with a particular focus on the ‘meaningfulness’ to affected people of a process involving forms of interaction that constitute ‘engagement’, such as consultations, interviews, surveys, town-hall meetings, etc.

We draw on the case of the Fundão dam break in late 2015 and the subsequent efforts by an organization set up by the involved mining companies to remedy adverse impacts in the main flooded villages, other communities, and ecosystems of the Doce river watershed. On 5 November 2015, a major failure occurred at a tailings dam for a mine operated by the mining company Samarco S.A. in a rural district of the municipality of Mariana in the Brazilian state of Minas Gerais. The collapse of the dam resulted in the flooding of downstream villages (including Bento Rodrigues and Paracatu de Baixo), 19 deaths, the displacement of hundreds of families, and severe socio-economic disruption in dozens of municipalities (FGV, 2019). In addition to damaging communities, the dam released around 43 million cubic meters of tailings (mining waste) into the Doce river. About two weeks later, the tailings mud reached the Atlantic, having flowed over 700 km and affected two states, 42 municipalities, and many rural communities. While the collapse is generally referred to in English as the Samarco dam disaster (or sometimes the Fundão or Mariana dam disaster), due to its extent and character, in Brazil it is often referred to as the Samarco crime or disaster-crime. Samarco S.A., the operator of the mine, is a joint venture between Vale, Brazil’s biggest mining company, and BHP Billiton, one of the world’s largest mining companies.

In March 2016, the Brazilian government and the involved companies reached a preliminary agreement for remediation and compensation for affected people and communities. However, it was soon suspended by a court order, owing to inadequate opportunities for the affected communities to participate in the negotiations leading to the agreement (Tuncak, 2017). This led to various other remedy initiatives, including the establishment of a new organization, named Fundação Renova (in English, ‘Renova Foundation’), to implement compensation and remediation programs, including the reconstruction of the destroyed villages (Alves et al., 2021; Maher, 2022; Dadalto et al., 2020).

Established by a legally binding agreement and funded by the mining companies Vale and BHP, the Renova Foundation is the central organization in a remedy set-up from the company level. The result of an agreement between Samarco, the federal government, and local governments (Carlos, 2020), the Renova Foundation functions as an operational-level grievance mechanism focused on the delivery of remediation. Being set up by companies or business networks and therefore private in nature, such mechanisms – while also diverse in nature

– are generally recommended by the UNGPs as part of a company’s system to learn about and deal with risks or harm early on (UN 2011, GP 25). As part of this, they should also function to deliver remedy to affected people when harm has occurred.

For a variety of reasons, the reconstruction of the two main flooded communities was not done at the original sites of Bento Rodrigues and Paracatu de Baixo. Instead, two new villages were planned, partly inspired by the original villages (including through landscaping). This was planned in collaboration with the displaced villagers who were invited to express their wishes for their newly built replacement houses. Yet, eight years after the dam collapse, at the time of writing (November 2023), rebuilding was still ongoing. While it is coming to an end in some places, the duration of the remediation process has left many of the displaced villagers discontent. Some have made new lives in the town of Mariana or elsewhere where they were resettled pending the rebuilding; many have repeatedly expressed wide discontent on the entire process to scholars, consultants or civil society organizations (Hanson Pastran and Mallett, 2020; Haugsnes, 2018). The Renova Foundation, which is implementing the resettlement projects, has been recognized to be an institutional innovation, but one that has been plagued by severe criticism, including unethical behavior (Coelho, 2023; Maher, 2022; Bertollo, 2020).

In many countries, including Brazil, academic and medical research projects are subject to formalized research ethics and clearance requirements. But practitioners in charge of various forms of interaction with (affected) stakeholders that ideally should be meaningful to the latter are not subject to such requirements. The engagement of companies and consultancies with stakeholders is not subject to specific ethics requirements, even for activities that assume contact with people who are or may be adversely affected by their activities. This applies broadly to engagement in the form of impact assessments, the implementation of proposed projects, or remediation for actual harm.

Research ethics standards generally aim to protect the dignity, rights, and welfare of research participants (WHO, n.d.). As we show in this chapter, such standards could provide a basis for promoting more ethical engagements with stakeholders. After all, MSE and research ethics requirements have much in common in terms of preventing and addressing risks or harm to frequently vulnerable actors. What is striking is that economic activities such as those undertaken by mining companies – which, as demonstrated by the Samarco dam collapse, can lead to immense impacts on the dignity, rights, and welfare of people – are expected to involve MSE but, unlike many research activities, are not subject to stringent ethics requirements; and nor are activities to provide remediation through the companies or grievance mechanisms or organizations established by them, such as the Renova Foundation.

Underscoring these parallels, intensive research focusing on particular communities or individuals in an area, such as the victims of the Fundão dam collapse, may result in a level of stakeholder tiredness, that could also be framed in terms of engagement fatigue or even of engagement disenchantment. Research fatigue has been found to be likely in contexts where repeated engagements do not lead to perceived change, or where the engagement conflicts with the primary aims and interests of the community or other group subject to the research (Clark, 2008). Unsurprisingly, engagement fatigue (caused by repetitive communication, consultations, interviews, surveys, etc.) has been recognized in the context of the Samarco disaster and victims (Maher, 2022). Such fatigue is one reason for exploring ethical behavior towards affected people. At the same time, communities subject to research are increasingly asking about the benefits that they will accrue from making themselves available, for example for interviews, or through accepting to be subject to observation. This underscores their

concern with meaningful outcomes; just like the UNGPs and OECD Guidelines assume (and demand) that remediation leads to meaningful outcomes for affected people, although it is also recognized that the road to such outcomes may be complicated. Similar issues are relevant, and questions are being raised with respect to the remediation programs of the Samarco dam disaster.

Based on a review of the academic and grey literature on the aftermath of the disaster, as well as an online survey with affected people, we examine and discuss the ethical dimension of stakeholder engagement in the Samarco dam disaster with an emphasis on the operational-level remediation set-up. We show that in the absence of specific tools or standards to assess meaningfulness in MSE, standards borrowed from research ethics can serve as a proxy in the assessment and design of an intervention involving engagement with affected people. While focused on a Brazilian case study, findings are likely to be relevant to a broad international audience of stakeholder engagement practitioners and policymakers.

This chapter proceeds as follows: The next section provides a background on research ethics and its application to research and engagement with stakeholders subject to research; and briefly contrasts this with MSE in business-oriented stakeholder engagement. The following section explains the chapter's method, including a literature review, and a survey of affected peoples' perceptions. Based on a review of previous studies, the chapter then provides an overview of the impacts of the Samarco disaster and critiques of the remediation process and set-up, with a particular focus on the operational-level remediation mechanism. The final sections present and discuss the findings of the survey and the literature review, and finally draw concluding remarks.

### **Ethics in academic research projects *versus* MSE in business-oriented stakeholder engagement**

Ethics, simply put, is a branch of knowledge that deals with the moral principles of human conduct. The term ethics is derived from the Greek word “ethos”, which means “character”, i.e. the beliefs or ideals that characterize a community or ideology. The equivalent of “ethos” in Latin is “mores” (thus the contemporary term ‘morality’), which refers to the manner, custom, habit, or social norms of a particular society or culture. For millennia, scholars have been studying and theorizing ethics. However, notions of what ethics means or implies may vary substantially among knowledge areas.

In the context of research, ethics concerns the moral principles that must be observed when planning, implementing, and publishing research, especially when humans and animals are involved. Research has long been plagued by ethical scandals, ranging from appalling experiments that subject humans and animals to physical harm and/or emotional distress to other types of misconduct involving the fabrication and falsification of data, plagiarism, data privacy breaches, etc. To prevent such unethical practices, numerous research ethics principles, guidelines, policies, and laws have been created over the years. For example, the United States, during World War II, created a research ethics code (known as the Nuremberg Code) that provided a legal basis for the prosecution of German Nazi scientists who had conducted morally abominable experiments with prisoners (Katz, 1996). Following this code, in 1978, the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research published *The Belmont Report: Principles of Ethical Research on Human Subjects*, which became the backbone of ethical clinical research in the United States while enforcing three basic principles: (1) respect for persons, (2) beneficence, and (3) justice (Miracle, 2016).

Legislative and normative bodies in the United States and in many other countries have developed research protocol review mechanisms to ensure that proposed studies adhere to sound ethical principles (Hirtle et al., 2000). By the early 2000s, dozens of countries around the world had adopted mandatory research ethics procedures. In general, these procedures mandate the lead authors of research projects involving human subjects to submit their research plans, protocols, and questionnaires to ethics committees to obtain ethics clearance. These committees typically review submitted documents to understand, for example, whether:

- research objectives, methods, and protocols are clearly and objectively communicated to participants;
- participants are able to provide free informed consent;
- anonymity is guaranteed;
- collected data are kept confidential and research complies with privacy laws;
- participants understand their roles in the research;
- participants are fully aware of the risks involved;
- participants understand how they might benefit or suffer from the research outcomes;
- researchers follow up on their promises; and
- contact information (e.g. email accounts and phone numbers) is provided (Edwards et al., 2007; Hirtle et al., 2000; Garfield, 1995).

While reviewing research proposals, ethics committees may request additional information and, depending on the risks involved, set conditions for the research to move forward. Such review procedures have become very common in biomedical research, as well as in the broad field of social sciences – globally (Israel & Hay, 2006) and in Brazil (Novaes et al., 2009).

Research should observe both procedural ethics, such as accountability, consistency, transparency, and trustworthiness (Favaretto et al., 2020) and relational aspects, taking into consideration the ‘who’ and ‘how’ of the interaction embodied in the engagement. As noted by O’Sullivan et al. (2023, emphasis in original), “[...] the ethics of engagement requires attention to *who is engaged with and how the engagement is enabled and structured*”. Of particular relevance to MSE in regard to affected stakeholders – who are often vulnerable – as well as part of the research ethics literature that have highlighted ethical challenges for research with vulnerable communities, is to ask how ethical sensitivity and strategic (research) effectiveness are combined. Pittaway et al. (2010, pp. 231–232) draw attention to “[...] the intersecting issues of power and consent, confidentiality and trust, risks to researchers and potential harm to participants, as well as the broader cross-cutting issues of gender, culture, human rights and social justice”.

Many research ethics systems, including Brazil’s, have roots in the biomedical field and have expanded to the humanities and social sciences (Leitão et al., 2015). Research projects in political science, sociology, and anthropology often deploy some form of stakeholder engagement as a data collection technique, although not necessarily framed in stakeholder terminology. Numerous data collection processes involving human participants are carried out through interviews, participant observation, online surveys, among other types of engagement with participants. Many Brazilian research projects are routinely scrutinized by ethics committees to ensure that they comply with the ethical requirements listed above (Rocha & Vasconcelos, 2023). Thus, interestingly, while the ethics of stakeholder engagement, when taking place in research settings (e.g. as part of an academic research project, thesis, etc.), must be reviewed and authorized by ethics committees, a similar ethics review and approval

is not required when stakeholder engagements are carried out by practitioners who work for consultancies, companies, or governments; nor when business organizations seek to remedy actual impacts through operational-level remedy mechanisms, such as the Renova Foundation. This does not mean that ethics is not a concern for stakeholder engagement practitioners. It probably is. However, ethical principles are not always explicitly addressed by practitioners, let alone institutionalized by social and environmental normative bodies.

According to the OECD Guidelines and UNGPs, businesses have a responsibility not only to prevent and/or, as relevant, mitigate harmful impacts, but also to remedy such impacts when they do occur (UN, 2011, GPs 11 and 22 with commentaries; OECD, 2023, commentary 46). It is also clear that they should draw on feedback from affected stakeholders to assess the effectiveness of their responses (UN, 2011, GP 20; OECD 2023, commentaries 50–51). Studies related to human rights due diligence observe that meaningful engagement with affected communities is simultaneously “a moral imperative and a strategic necessity in human rights due diligence” (The Remedy Project, 2023). Although the UNGPs and OECD Guidelines stop short of specifying meaningful engagement with affected stakeholders in regard to remediation, the expectation of such engagement permeates the due diligence process with a view to identifying risks and impacts and taking adequate responses. It is logical that providing a response that is adequate, and therefore meaningful, to victims of harm from their perspective, must be informed and supported by a process of engagement with them that is also meaningful to them. From this perspective, MSE is important not just for the identification, prevention, and mitigation of risks or harm, but also for remediation.

Indeed, remediation in the sense of the substantive reparation of harms is frequently seen to be so closely related to due diligence as to forming part of that process. This is the case, for example, with the OECD’s 6-step due diligence wheel (OECD, 2018), which is applied by multiple companies and other organizations. As also explained in the introduction to this handbook (Buhmann et al., 2024), the 2023 update of the OECD Guidelines significantly increased the emphasis on MSE as an aspect of all processes related to responsible business conduct. The extent of this is such that it has been labeled ‘meaningful stakeholder engagement 2.0’ (Lichuma, 2023).

Scholars have long been investigating the relationship between ethics and stakeholder engagement, but with a historical focus on how engagements can contribute or not to lessening ethical problems. For example, Mitchell et al. (2022) have argued that engagements, when seen as a way of reducing risk, ambiguity, complexity, equivocality, and uncertainty, can help managers address ethical challenges. Conversely, Owen et al. (2001, p. 264) argue that practices of stakeholder engagement, at least in the field of social and ethical accounting, “amounts to little more than corporate spin”, having little or no capacity to address ethical challenges.

While the ethical problems “of” engagements have been studied in the narrower field of “shareholder” engagement (Goodman & Arenas, 2015), few studies have tried to understand the ethical problems that permeate risk-based due diligence, or remedy-oriented stakeholder engagements as part of such a process. After all, how ethical has stakeholder engagement been from the perspective of those who are being ‘engaged’ in impact assessments, particularly affected people, or in remediation of harm they are exposed to? Are engaged communities feeling respected? Do they trust the professionals and companies in charge of stakeholder engagement, and does their experience change in the course of a project or during remediation? Are affected people’s data being collected and analyzed in an ethical manner? These are just a few of the many questions that remain marginally explored in the literature.

Aware of this knowledge gap, this chapter set out to understand how the people affected by the Samarco dam break perceive the ethical aspects of the various communication and engagement programs in which they have been involved. These types of engagement fall within the risk-based due diligence approach, which, as noted in the Introduction (Buhmann et al., 2024), should be ongoing, covering all phases from inception to completion of a business project, including its aftermath and remediation.

## **Methods and case study**

### *Case study and context for the case*

This chapter adopted a predominantly qualitative approach to inquiry based on a single case study. This approach is a common methodological choice among social scientists who explore under-researched, context-dependent problems (Creswell, 2007).

Many sampling approaches and data collection and analysis methods can be adopted in qualitative case studies (Yin, 2003). Given that the ethical problems of stakeholder engagement remain under-researched, this chapter explores a case in which problems were already known and would likely be perceived to be ethical issues, if they had occurred within a research context. Examining the case from an ethics perspective thus allows for academic scrutiny that contributes to understanding the experience of affected stakeholders regarding effective MSE.

The reasoning for the choice of this case is its impacts and the complexity and discontent surrounding remediation through the Renova Foundation. The Samarco Dam break is among the world's most catastrophic technological disasters. While it caused 'only' 19 deaths, its socio-economic and biophysical impacts have been felt in large portions of the states of Minas Gerais and Espírito Santo, an area that is almost the size of the country of Portugal. The dam failure caused serious disruptions to the lives of thousands of people and triggered one of Brazil's most complex post-disaster restoration, remediation, and compensation programs. In addition to the creation of the Renova Foundation and the various activities and compensations offered as part of the remediation offered by the foundation, dozens of judicial and executive institutions at the federal, state, and municipal levels are involved in post-disaster policies, programs, lawsuits, and non-judicial agreements (Primo et al., 2021). A wide and diverse range of stakeholder engagement programs and activities have been implemented in the 44 affected municipalities. Moreover, numerous universities, NGOs, technical assistance organizations, commissions of affected people, and other grassroots organizations have been actively working with social and environmental justice issues related to the disaster to support the affected communities.

Two rural communities were entirely devastated by the mud and debris: Bento Rodrigues and Paracatu de Baixo. As shown in Figure 30.1, they were located in the city of Mariana just below the dam. In 2015, prior to the dam break, Bento Rodrigues and Paracatu de Baixo housed about 600 and 300 people, respectively (FGV, 2019). While some families from these communities opted for financial compensation, many others chose the resettlement option they were offered by the involved companies through Renova. Yet, eight years after the dam break, many families were still waiting to move into their new homes.

The Renova Foundation is responsible for the resettlement and rebuilding programs of several villages, including Bento Rodrigues and Paracatu de Baixo. Due to the scale of the socioeconomic disruption caused by the dam break, the Mariana region has also been

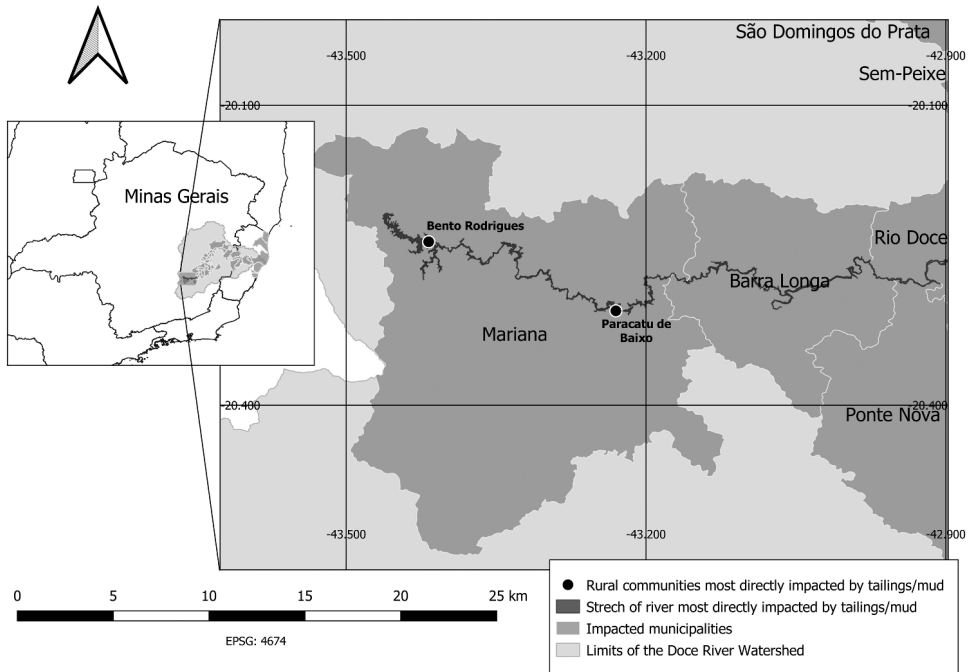


Figure 30.1 Study area and pre-resettlement location of the two most directly affected villages

prioritized by an independent technical assistance organization (Cáritas Brasileira), which assists affected people in post-disaster matters.

### Review of other studies

To capture the ethical issues in the affected-stakeholder program in the Mariana region, a two-pronged literature review was undertaken. The first part considered ethical aspects of stakeholder engagement, in particular with affected stakeholders. The second part reviewed published academic studies related to the Samarco dam disaster and the remedial aftermath. The Samarco dam break has triggered multiple studies, published in Brazil and in international journals. To identify these studies, systematic searches in the Scopus and Google Scholar research databases were undertaken between November 2022 and August 2023. While Scopus is the world's largest academic database, many non-indexed, Portuguese-written studies can only be found in Google Scholar. The focus of the literature review was on the communication and engagement programs, including the operational-level remediation program, and their ethical challenges. Within the large number of studies of the dam collapse and its impacts, these issues, however, are only specifically covered by around a dozen studies.

### Online survey

Following the literature review and inspired by what it showed, an online survey was designed to capture the perception of the affected people themselves about the ethical challenges of the engagement programs following the disaster, in particular the Renova Foundation project.

In collaboration with *Cáritas*, the aforementioned technical assistance organization, and with the approval of the Commission of People Affected by the Fundão Dam (CABF<sup>1</sup>), the online questionnaire was shared with a group of more than 5000 people from the Mariana region registered by *Cáritas*. This group includes not only the families whose houses were destroyed by the flood of tailings, but also many other individuals whose economic and social activities were affected by the disaster.

The survey was organized into five sections and asked respondents to provide anonymous information about their personal feelings and overall perception about the dam break, the communication and engagement programs in the aftermath, the involved institutions, etc. Most questions were closed-ended, but a few open-ended questions allowed for more contextual, spontaneous responses. Only 23 affected people provided complete responses to the survey, which represents a small fraction of the targeted population. As further discussed below, this is likely an indirect effect of the ethical challenges and sense of lack of meaningfulness that permeate the post-disaster engagement programs.

### **Literature review**

The bulk of the academic studies on the disaster and its aftermath have not explicitly dealt with issues of engagement with affected stakeholders. This literature broadly falls into two main social science streams. One stream emerges from within management and organization studies. These studies deal mainly with the post-disaster governance model, stakeholder engagement strategies and related experiences, values, and perspectives (e.g. Esteves & Mazzola, 2018; Goes et al., 2021; Jhuniior & Goes, 2022; Euclides et al., 2022; Bortolon et al., 2021). Another stream, a more diverse one, is represented by anthropology, law and sociology studies that emphasize the human rights of those affected by the disaster and its aftermath, including the rights of participation (e.g. Bertollo, 2020; Ceni & Rese, 2020; Coelho, 2023; Zhouri, 2018; Lavalle et al., 2022; Maher, 2022). This stream of the literature also addresses the consequences of the disaster-crime of Mariana, acknowledging the complex temporality and spatiality of its related harms (e.g. Lavalle et al., 2022; Bussinguer et al., 2020; Milanez & Santos, 2018; Zhouri, 2018).

This literature on the Samarco dam disaster highlights crucial facets of effective research practices, offering valuable insights into understanding and evaluating the trust-building possibilities involved in engagements with affected communities. A key emphasis lies in recognizing and addressing power imbalances inherent in both internal dynamics and the relationships among stakeholders, the mining companies, and the Renova Foundation, i.e., the organization charged with operational-level remediation efforts (Zhouri, 2018). It is imperative for researchers, governmental bodies, and private entities to be acutely aware of the potential marginalization and silencing that their research may inadvertently perpetuate within affected communities and in relation to other stakeholders (Euclides et al., 2022).

Studies undertaken on the specifics of the remediation process are less explicit about ethical issues, but implicitly expose relationships and engagement with affected stakeholders and their perceptions in ways that relate to the understanding of ethics noted above. In particular, some of these studies discuss the effectiveness of the Renova Foundation and its programs offered. For example, a number of studies point out that the governance structure of the Renova Foundation prevented those affected by the dam break from having an effective say in the planning and design of the remediation scheme, because it excluded them from developing the mandate of the foundation (Euclides et al., 2022; Lavalle et al., 2022; Silva et al., 2019;



Milanez & Santos, 2018). Milanez and Santos (2018) also underlined that “Decision makers adopted strategies and methodologies with limited participation, [...] diverting from what specialized literature recommends doing” (p. 138). Ceni and Rese (2020) describe the Renova Foundation and its programs as representing a strategy dominated by its own interests.

Zhoury et al. (2018), in turn, have argued that the dam collapse recreates vulnerability patterns already in place: villagers who were already adversely affected by the mine prior to the collapse were converted into ‘victims’ after the collapse.

Studies have also highlighted the importance of an interdisciplinary approach to understanding the complexity of the challenges that the disaster represents, for example, in terms of collective health (Freitas et al., 2019), long-term impact of the tragedy on the mental health of those affected (Noal et al., 2019), or even memory and cultural losses of the residents of Bento Rodrigues (Miranda et al., 2017). Such issues resemble the line of argument behind the UNGP’s insistence on MSE to understand the complexity of the situation of affected stakeholders in order to appreciate and handle impacts, as described in the introduction of this handbook.

Maier (2022) found that victims who were expecting to benefit from the Renova Foundation programs reported repeated delays in meeting deadlines set by the foundation itself. He observed that prior to the dam collapse, the community was highly dependent on the mining company (Samarco) and its supply chain for its livelihood and economy in general. Reportedly, the company provided 80% of the income for the wider community in the town of Mariana (ibid.).

Demajorovic et al. (2019) noted that prior to the dam collapse, Samarco was considered a genuine member of the community’s social network. However, the company’s stakeholder engagement was more geared towards monitoring the perception of its image and reputation than community impacts, let alone empowering communities to become less dependent on the mine or less vulnerable vis-à-vis harmful impacts from the mine. Despite this, Maier (2022) found that only weeks after the disaster, the wider community’s economic dependence on Samarco became even more evident, as many locals started to support the return of Samarco’s mining activities.

Maier (2022) also observes that Renova’s interaction with the affected stakeholders was impeded by the formal sphere associated with the legal rationale of the project’s background and governance. He suggests that Samarco deployed the formally independent multi-stakeholder initiative structure of the Renova Foundation to shirk the company’s responsibilities associated with their duties towards the care and respect of their victims’ human rights.

Silva et al. (2019) and Lacaz et al. (2017) noted that Renova’s governance model left affected people disempowered by limiting their active participation in decision-making. They emphasize the absence of engagement practices by Samarco as a contributing factor. Milanez and Santos (2018) state that governmental actors also share responsibility for not involving affected individuals in shaping Renova’s mandate.

The ‘forced’ closure of the mine following the disaster led to reprisals against affected stakeholders who had moved into the nearby city of Mariana. They were blamed for the suspension of the mine and the resulting loss of jobs and economic downturn. The fact that they were offered compensation payments and housing paid by Samarco and the Renova Foundation caused animosity by some in the wider community, also reflecting community dynamics prior to the disaster when many people in the area, but not all, gained their living from the mine (Maier, 2022).

Whereas the Renova Foundation has been criticized for a governance structure reflecting or even perpetuating already existing power disparities between the mining companies and

the villagers, some efforts were made to address the power asymmetries in the wider responses to the disaster. Coelho (2023, p. 5, emphasis in original) explains that in order to deal with the power asymmetry, the Brazilian judicial institutions and civil society organizations adopted innovative measures by introducing “[...] a system of *independent technical advisors* – experts on certain issues whose costs were covered by the perpetrators (the mining companies Samarco, Vale and BHP Billiton) but who were chosen by, and responded directly to, the affected people”. Caritas-MG has been playing such a role and has been in a permanent legitimate engagement scheme with the CABF.

Still, Alves et al. (2021) and Nabuco and Aleixo (2019) argue that, despite more than 85,000 civil and criminal, individual and collective proceedings as well as special settlement schemes and reparation programs, redress for affected communities and individuals remains limited. Alves et al. (2021) find that concerns regarding the lack of victims’ participation and the absence of proper social participation mechanisms in Renova’s decision-making processes remained largely unaddressed. They argue that because of Renova’s inadequacy in fulfilling its mission and legal responsibility for repairing and redressing all damage caused by the collapse, a judicialization occurred, resulting in the so-called Simplified Indemnification System. Yet, Alves et al. (2021) find that regardless of the backdrop of the governance and participation problems in the operational-level remediation mechanism of the Renova Foundation, the Simplified Indemnification System requires victims to either accept a top-down, arbitrary matrix of damages; or accept Renova’s programs as they are; or lodge their own individual proceedings and bear years of insecurity of court proceedings. In other words, neither the state-based, nor the operational-level remedy mechanism function in a way that can be considered meaningful for all affected stakeholders, neither in regard to the procedure, nor in regard to the outcome.

Overall, the reviewed literature indicates significant problems in regard to the delivery of remedy to the people affected by the Samarco dam disaster, including the two villages (Bento Rodrigues and Paracatu de Baixo) most directly targeted by the socioeconomic remediation programs.

### **Survey findings**

The overall message embodied in responses to the survey was one of disappointment with Renova’s efforts and limited results, as summed up by one respondent:

It has been almost 8 years since the dam broke. We, the affected people, are tired. There are no solutions to our problems, no feedback, no respect. To be fair, the whole process must happen with the presence of affected people, especially in decisive and deliberative moments (survey respondent).

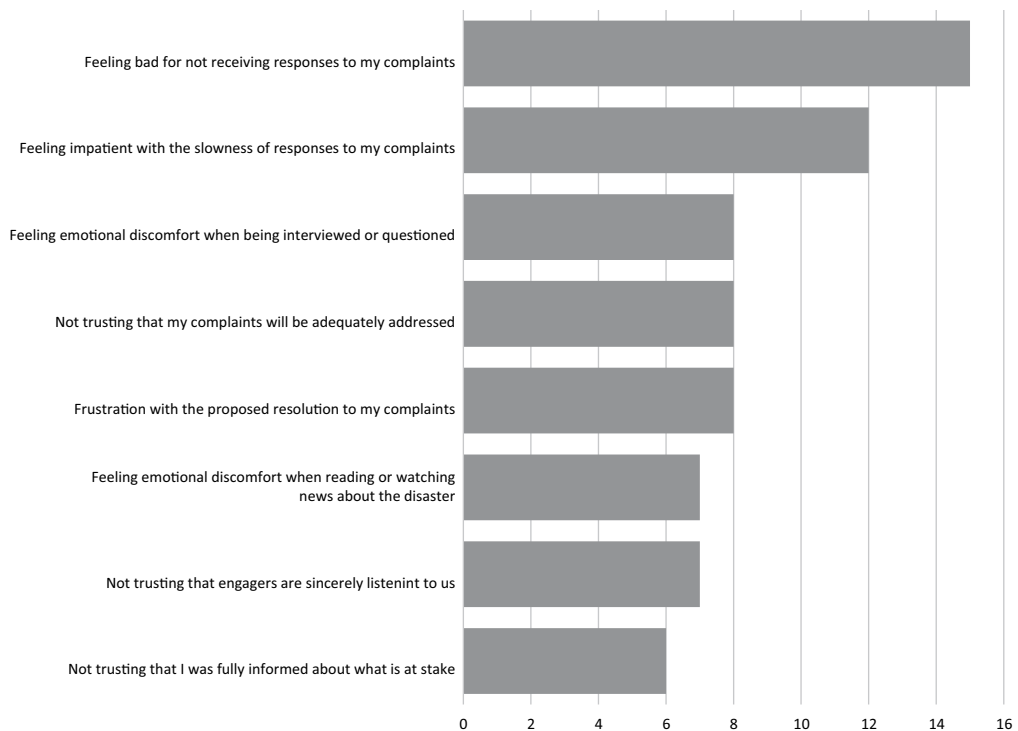
Given the low response rate (as explained in the previous section on “Methods and case study”), one cannot take the survey findings as being representative of the entire population of affected people. However, answers do provide a window of opportunity to understand the feelings of some of the affected people from the Mariana region about the ethical dimension of stakeholder engagement. Most respondents (15, or 65%) answered that they were living in the municipality of Mariana prior to the dam break. Of these, six were residents of Bento Rodrigues and four were from Paracatu de Baixo.

The respondents’ demographic information confirms what was already known about their socio-economic conditions (FGV, 2019). However, their answers to the questions related to

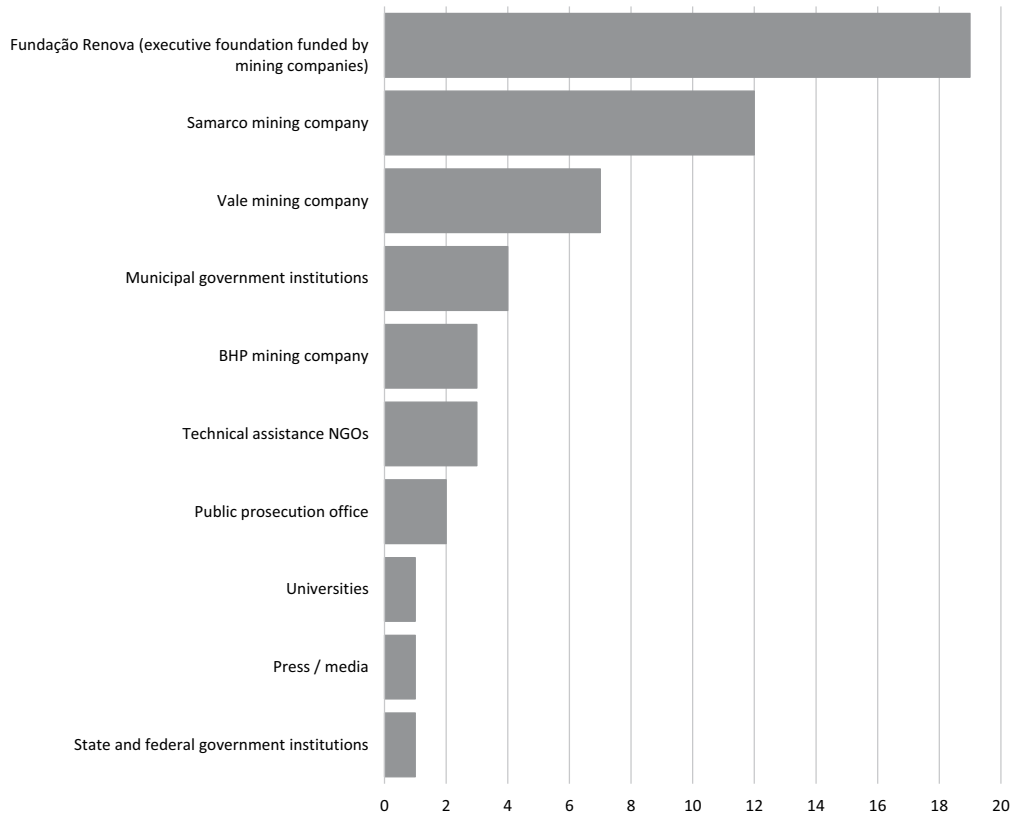
the observance of ethics in communication and engagement programs revealed important insights (see Figure 30.2). Most responses indicate that the affected people are often frustrated with the lack or slowness of feedback or adequate follow-up on their complaints. The responses also signaled other problems, such as a lack of trust in several aspects of the communication and engagement, frustration with engagement outcomes, and emotional discomfort during the engagement.

Findings presented in Figure 30.2 corroborate the concern that the engagement and participatory procedures and activities can trigger feelings of discomfort and/or disrespect among affected people. Most importantly, they suggest that these feelings can stem from ethical problems, such as lack of informed consent, unclear objectives and procedures, no feedback, dishonesty, among others. When asked which institutions or organizations most often trigger those feelings, most of the respondents mentioned some those directly related to the mining companies, such as the Renova Foundation, or the companies Samarco, Vale, and BHP (Figure 30.3). Given that the disaster was caused by these organizations, one would expect the affected people to be more likely to distrust them and remain skeptical about their ethics. However, respondents also mentioned that local government institutions and technical assistance organizations, at times, involve them in participatory processes that are, to some extent, disrespectful.

The open-ended questions also revealed numerous other issues. When asked about what could be done to improve the participatory and engagement programs, participants mentioned,



*Figure 30.2* Most frequently mentioned feelings of disrespect and/or discomfort when taking part in participatory activities or stakeholder engagement programs



*Figure 30.3* Most frequently mentioned institutions that triggered feelings of disrespect

for example: genuine listening; more communication; faster decisions and procedures; more legal support; effective and proportional justice; coherent answers; more power to the technical assistance organizations; among others. One of the respondents also raised serious concerns about the representativeness of the commissions and other affected people-related organizations. This survey participant claimed that these organizations represent just a fraction of the affected people, but deliberate in the name of everyone, thus leading to frustration and emotional distress.

One of the key findings of the survey does not relate to the responses, but to the very low response rate (only 23 responses out of a population of more than five thousand affected people (FGV, 2019), i.e. much less than 1%). The very low response rate in itself corroborates what some authors (Losekann & Milanez, 2021, 2018) have observed on research fatigue: that affected people can get ‘tired’ of filling out questionnaires and answering questions about their feelings and perception about the dam break and its aftermath.

The survey contained only a few questions and was formally approved by the commission of people affected by the Samarco dam disaster. Yet almost every affected person who received the survey link ignored it. The fact that the survey was entirely voluntary and anonymous probably to some extent explains this outcome. But the low response rate is likely also partly explained by the fact that dozens – or perhaps hundreds – of other questionnaire-based surveys had

already been carried out in the region. Without strong incentives, it is very difficult to engage affected people in new voluntary surveys. This was also emphasized by respondents who pointed to the duration of the process, its limited results, and the sense of disappointment.

Overall, the survey corroborates the concern that – like research in the social sciences – stakeholder engagement by practitioners, including organizations involved in operational-level grievance and remediation, can have harmful effects through triggering sentiments of disrespectful treatment and emotional distress. For people who are already affected by harm caused by another activity or event, this may add further harmful impacts, for example by re-activating the experience of loss or building a feeling that meaningful responses are absent or take too long. Accordingly, one could argue that, to be truly meaningful, engagements should take into account the research ethics principles that are typically used in academia to prevent such harms.

### **Discussion**

As noted, the Renova Foundation was set up by the mining companies in agreement with the state governments of Minas Gerais and Espírito Santo and the federal government. The foundation's funding by the mining companies Vale and BHP, and its general governance and mode of operation, make it a form of an operational-level remediation mechanism. The company involvement may explain some of the general mistrust towards the foundation. However, issues related to engagement with the stakeholders adversely affected by the dam disaster and its aftermath also explain important aspects of discontent. This section elaborates on this, based on the above review of literature and the survey explained in the previous section.

Following the reasoning of O'Sullivan et al. (2023) and of Favaretto et al. (2020), an ethics of MSE should consider both procedural aspects (accountability, consistency, transparency, and trustworthiness) and relational aspects, taking into account the impact of the relationships with stakeholders in time and in terms of their perception of fulfillment of needs and respect for their needs and concerns from their own perspective. To this should be added the substantive outcome aspects, in other words, whether the engagement processes deliver value for the affected stakeholders, such as with regard to remediation that is adequate and relevant to their needs (Buhmann, 2023).

Rights of participation have been highlighted by multiple studies on the aftermath of the Samarco dam failure (Coelho, 2023; Lavallo et al., 2022; Bertollo, 2020; Zhouri, 2018). There is a close correlation between the right to participate in the design of an engagement process (whether for initial impact assessment or later steps, including remediation) and the procedural and relational aspects of an ethical character that are considered good research ethics practice.

Drawing on insights from research ethics, as well as findings based on the literature review and the survey, two main aspects of enhanced engagement with affected stakeholders can be identified. First, engagement involving potentially or actually affected stakeholders often involves elements of fieldwork, such as consultations or town-hall meetings in impact assessment processes, interviews, observations, and community visits, and various forms of surveys. As noted above, similar activities may also be part of engagement to design and implement remediation through operational-level remedy mechanisms, such as the Renova Foundation. The design and implementation of such processes should be mindful of historical and political issues or conflicts, such as any related to the mining project that led to the dam disaster (Maher, 2022). Governmental and private actors should be attentive to their marginalization,

silencing, and disrespect (Euclides et al., 2022) when planning and implementing engagement actions.

Second, as evidenced by the survey and literature, the participation of affected stakeholders in the design of engagement processes is absolutely key to the legitimization and meaningfulness of participatory processes. This relates to affected people's time availability, the process itself, the outcome, and its perceived relevance to their needs and situation in the spatially and temporally dynamic arena in which a project (such as a mine), a disaster (such as the dam failure), or remediation (such as through the Renova Foundation) is situated. For the Samarco dam failure and its aftermath, a perceived lack of real participation by affected stakeholders explicitly or implicitly forms part of much of the critique of the Renova Foundation. Despite some recent improvements (Branco, 2023), the remediation mechanism has been found to apply merely performative participation, without enabling the active participation of communities and social movements (Lacaz et al., 2017; Ceni & Rese, 2020). Such technical framing of participation, which we may describe as tokenistic, contributes to a sense of meaningless, rather than meaningful participation from the point of view of the affected communities.

The problems permeating the programs implemented by the Renova Foundations, including those of an ethical nature, may be one of the reasons why decision-makers opted for a different type of remedy set-up in the aftermath of another major dam collapse, the B1 dam in Brumadinho, which collapsed in early 2019. This was another major disaster in the same Brazilian state where the Mariana dam collapse had occurred in 2015. Instead of a complex governance structure similar to the set-up of the Renova Foundation, they opted to leave the mining company fully in charge of the remediation programs and respective stakeholder engagements. While this remains a private-sector-driven mechanism, this set-up was seen as a more effective and less complicated way of implementing the much-needed remediation activities (Silva, 2022).

In hindsight, one could argue that the engagement problems in the Fundão Dam break aftermath, which we have identified based on the literature review and through the above survey (e.g. participation fatigue, weak and late involvement of affected communities, governance barriers, lack of trust, tokenism, etc.) might have been prevented or mitigated if the Renova Foundation and the involved authorities in charge of the participatory processes had taken into consideration research ethics principles.

Some research ethics principles related to the treatment of information (such as ensuring anonymity and confidentiality, clarity of engagement objectives, methods, and protocols) could easily be applied to the remediation programs, and arguably without side effects. These principles are almost generic, in the sense that they may be used in any engagement situation, depending mostly on political will and human and financial resources (Edwards et al., 2007; Hirtle et al., 2000; Garfield, 1995).

However, if not adequately implemented, the research ethics principles that are of a more procedural nature (such as requiring affected people to provide 'free and informed consent' to participate, and subjecting those who undertake engagements to ethics review and approval procedures) could complicate and slow down the remediation process. The literature review and the survey suggest that affected people have been concerned about the slowness of the remediation program, including the village reconstruction to enable their resettlement. The survey findings presented in Figure 30.2 also corroborate the fact that affected people were impatient with the slow speed of feedback to their complaints and inputs in allegedly participatory processes. In this context, adding another precautionary layer of informed consent

could result in more bureaucracy, further complicating a governance system that is already perceived to be overly complex (Losekann & Milanez, 2021).

In this context, the implementation of ethics review and approval procedures is particularly challenging. In the research context, such procedures tend to be perceived in many countries as bureaucratic, and at times cumbersome, leading to unnecessary delays in the implementation of research projects (Snooks et al., 2023; Douglas-Jones, 2019). But, arguably, research projects are less complicated than the remediation programs following large-scale disasters. As shown in this chapter, affected people must be involved in multiple layers of participatory processes. Adding ethics review procedures to each of these processes would inevitably be perceived as being bureaucratic, imposing a trade-off between precaution and efficiency. In other words, in the context of operational-level remediation programs that struggle to be procedurally efficient, the typical research ethics review and approval procedures are unlikely to function as expected. Therefore, companies and government authorities would need to think of other ways to plan and embed ethics considerations in engagement programs as a way to contribute to meaningful engagement with affected stakeholders.

### **Final remarks**

The perceived ethics of stakeholder engagement in operational-level remediation mechanisms is under-researched. This chapter aims to reduce this knowledge gap by exploring a case of remediation of harms caused by a tailings dam break in Brazil that has been plagued by numerous problems related to the participation of affected stakeholders.

Based on a literature review and a survey with people adversely affected by the Samarco dam disaster, the chapter has shown that while meant to be a means to prevent harm, stakeholder engagement with affected people can also be a source of harm, for example by adding a sense of not being sincerely and meaningfully involved. We have shown that affected people often feel tired, uncomfortable, skeptical, suspicious, and disrespected when involved in participatory processes and engagement programs that are tokenistic. This can be explained by multiple factors. In the specific case of the Samarco dam break, many of these ‘unintended’ harms are a consequence of a combination of the scale of the disaster and the subsequent remediation efforts. The latter include the operational-level remediation mechanism, which, as we have shown, is perceived by affected people to be complicated, slow, prone to power asymmetries, and function through forms of engagement that are not perceived to be meaningful in terms of process or outcome.

On the one hand, companies, consultants, and government authorities should engage with affected people to advance their remediation programs. On the other hand, as demonstrated by this chapter, such engagement cannot always take account of the basic ethics principles that would have applied in a research context, by, for example, providing clear information and ensuring anonymity, confidentiality, and timely feedback. Based on such considerations, this chapter has argued that the field of ‘research ethics’ – and the tools employed to provide for ethical research – could inspire enhancements in stakeholder engagement programs by providing principles that can help to protect the dignity, rights, and welfare of affected people. However, it is important to keep in mind that such ethical principles should be implemented efficiently in context, themselves being subject to meaningful involvement of those affected. If not, the ethical requirements of free and informed consent, of ethics review and approval procedures, could further complicate the remediation programs, leading to additional emotional distress.

Overall, this chapter has made the case that there is an ethical dimension to stakeholder engagement, one that overlaps with notions of meaningfulness. While the literature has long been calling for engagement processes that are genuine, iterative, and attentive to the bottom-up perspectives of affected people as shown in the introduction to this book (Buhmann et al. 2024), few studies have been calling for the observance of ‘ethics’ in engagements. As shown here, stakeholder engagement, for example in the context of remediation, can be perceived as being unethical and as generating harm. None of this accord with the essence of MSE as set out in the UNGPs and OECD Guidelines. We suggest that more meaningful engagement should strive to be ethical in the senses applied for research ethics, with relevant adaptations to the operational context. Future studies should continue to investigate this issue, not only in the context of operational-level remediation mechanisms, but also in the more proactive settings of risk-based due diligence and the meaningful engagement of affected people in impact assessment decision-making.

### **Acknowledgements**

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### **Note**

- 1 CABF is the abbreviation in Portuguese for *Commission for People Affected by the Fundão Dam*, in Mariana, representing the affected territories of Bento Rodrigues, Paracatu de Baixo, and rural zones (Paracatu de Cima, Ponte do Gama, Pedras, Campinas, Borba, and Camargos).

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# CONCLUSION



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# THE FUTURE OF MEANINGFUL STAKEHOLDER ENGAGEMENT

## Integrating Values, Norms and Practices

*Karin Buhmann, Alberto Fonseca, Nathan Andrews  
and Giuseppe Amatulli*

### Introduction

Pressures are mounting for more processes of meaningful engagement with affected stakeholders, i.e. those who are, or may be at risk of, being affected by activities such as natural resource extraction or processing, infrastructure, production of products for industry or consumption, or other activities driven by external actors. Over the past decades, and particularly in recent years, the term meaningful stakeholder engagement (MSE) has come to be deployed with a particular emphasis on affected stakeholders, referring to processes that try to ensure that their views, concerns, and needs are identified, understood, and handled in a manner that is inclusive of them and driven by their perspectives. As noted in the Introduction (Buhmann et al. 2024), rights-holders are stakeholders who may also be ‘affected stakeholders’, but not all stakeholders are rights-holders. Affected stakeholders may be individuals as well as groups, such as communities who are connected by living in a common place and are therefore jointly (but not necessarily similarly) affected by certain external impacts, such as environmental harm or disturbances to the community fabric.

There are two key drivers of MSE: a surge in normative frameworks on MSE; and growing societal expectations. While discussions on stakeholder engagement and meaningful engagement have existed for some time, particularly in the organizational and impact assessment fields (see Fonseca, 2022; Götzmann, 2019; Owen & Kemp, 2013; Bowen et al., 2010; Friedman & Miles, 2006), the MSE term has gained prominence as a result of the role that meaningful engagement with affected stakeholders is awarded in leading normative frameworks with global or near-global application, which aim at reducing harmful business impacts. In particular, the United Nations Guiding Principles on Business and Human Rights (UNGPs) (UN, 2011) have played a major part in this regard, not just in providing MSE with a pivotal role as an element in risk-based due diligence, but also by acting as a normative source for several other normative frameworks that have adopted MSE or implicitly refer to MSE through a risk-based due diligence norm focused on the identification and management of risks to society and the environment, e.g., the UN Global Compact, the OECD Guidelines for Multinational Enterprises (OECD 2011/2023), IFC Performance Standards (revision 2012), and others (see Buhmann, 2020; Buhmann, 2015). The MSE term and its connection

to risk-based due diligence have provided a language to the other key driver, namely: a growing societal awareness about the importance of stakeholders having a say in decision-making processes on projects, plans or economic activities affecting their livelihoods and fundamental rights, intertwined with a growing frustration and dissatisfaction with current public participation approaches.

The significance of that awareness and frustration is evident in important normative developments that occurred during the years when this book project evolved (mid-2022 to early-2024). Adopted in June 2023, the update of the OECD Guidelines underscores the growing attention being paid to the role of MSE as a key element of risk-based due diligence (OECD, 2023). Along with this, a surge of new European Union (EU) legislation that requires risk-based due diligence for various product supply chains, investment as well as in disclosure requirements and to eradicate the use of forced labour, including forced child labour, continued pushing awareness of MSE as an aspect of such due diligence.

For a book on MSE in a global perspective, readers may wonder why we attach such significance to soft-law guidelines from the OECD or EU law as we do above. First of all, the legacy of the risk-based due diligence approach, which embodies the idea of MSE that the OECD and EU have taken up, vouches for the global relevance: the UNGPs, which are the general source for MSE in the context of due diligence and wider responsible business conduct, apply to all companies, everywhere, regardless of form, size, etc. In addition to directives for companies, the UNGPs underscore that governments have obligations to not only provide guidance but also adopt policies, legislate and monitor business conduct and provide for access to remedy, including complaints mechanisms. Moreover – as also described in Chapter 1 (Buhmann et al., 2024) – many of the implications of the OECD Guidelines and EU laws that explicitly or implicitly demand MSE are global: this is because they target global value chains and organizations and processes along those chains. As a result, they also contribute to shaping MSE in countries and regions beyond the Global North where these guidelines and legislative initiatives originate. Despite studies that critically examine the relevance and efficacy of such governance initiatives for affected stakeholders in specific contexts where these norms are operationalized (see Joseph & Kyriakakis, 2023; Andrews, 2019; Augenstein, 2018; Baccaro & Mele, 2011), as well as studies questioning the legitimacy of Global North-based countries using a combination of trade and law to shape conduct of businesses in other jurisdictions (see Buhmann & Nathan, 2019), the overall global implications and MSE potential of these governance initiatives should not be overlooked. The fact that they have MSE implications from bottom-up as well as top-down perspectives calls for both awareness and critical perspectives. The transnational implications can also serve as an opportunity for affected stakeholders and others in countries at the ‘receiving end’ of the frameworks to insist on the meaningful engagement processes that are embodied in the due diligence requirements in OECD and EU frameworks.

A strong push for cascading of MSE along value chains (as part of due diligence) is associated with the OECD Guidelines as well as EU requirements. An important reason for this is that risk-based due diligence assumes downstream companies to make demands on their upstream partners. Since the OECD Guidelines apply to companies operating or out of OECD countries or other states that adhere to the Guidelines, their effects may be significant in this way. And though EU law only applies within the EU, the cascading effect of due diligence, along with the global integration of value chains, is likely to contribute to enhanced expectations of MSE in many countries. The significance of MSE in these regards is already

evident in academic articles and blog posts (e.g., Lichuma, 2023a, Pires & Schönfelder, 2023, Lichuma, 2023b). The significance of MSE for a fair and just green transition in the light of the UNGPs and OECD Guidelines is also gaining traction (e.g., Cambou, 2024, Johnstone & Buhmann, 2023), even as the adequacy of the engagement processes to be meaningful to the interests of affected stakeholders and rights-holders remain contested (e.g., Fjellheim, 2023). MSE has also been increasingly addressed in the context of practice-oriented guidance for ethical trade and global value chains (e.g., Ethical Trade Denmark, 2024). As due diligence legislation is on the rise globally, from Brazil to Korea, MSE demands will expand too.

It is evident that as MSE demands and expectations advance, awareness of what constitutes ‘meaningful’ engagement also grows. This includes situations and practices in which affected stakeholders may be meaningfully involved as well as situations and experiences on interaction with affected stakeholders that do not deliver meaningful engagement. Unlike other concepts (which also cover processes) in related fields, such as impact assessment (IA) or corporate social responsibility (CSR), which are defined by the combination of the words in the composite term, MSE is acutely hinged on each of its three elements M + S + E (i.e., Meaningful + Stakeholder + Engagement).

The chapters and practice notes published in this volume offer a diverse set of perspectives on those issues. Even though MSE is increasingly being subject to explicit expectations set out in normative frameworks, we have not applied one single standard or rule to say what MSE is in the individual chapters or practice notes. Rather, we have allowed the chapters and notes to illustrate the diversity of MSE needs, expectations, practices, and potential for improvement. We introduce the key standards and elements of MSE in Chapter 1, and invite readers to reflect on the diversity as well as adequacy for attaining MSE as they read the various contributions in the book. At such a defining moment for MSE given the surge in hard-law requirements, the chapters and practice notes display a series of snapshots from a divergent set of countries, sectors, and academic disciplines as well as practitioners’ perspectives. Despite the difference in the many cases and situations covered by the chapters, a survey carried out by the editors (noted in the following section) corroborates that there is considerable convergence around the extant and emerging aspects of MSE (see Figure 31.1 further below).

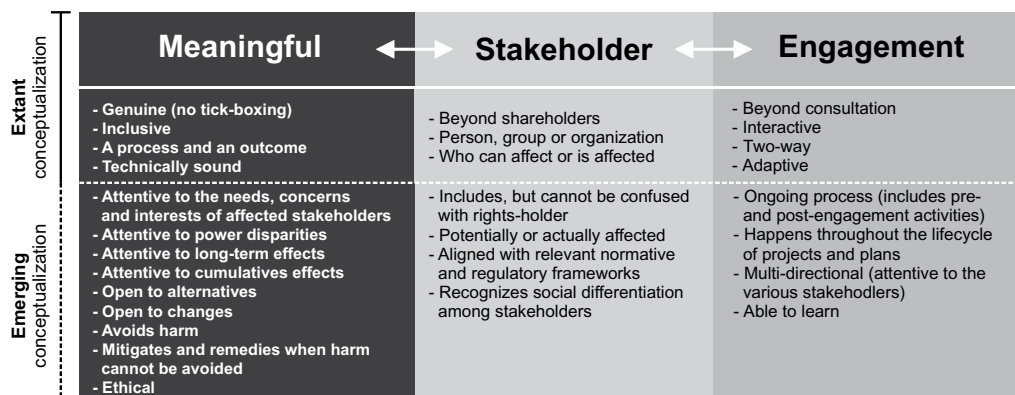


Figure 31.1 Extant and Emerging Conceptualizations of Meaningful Stakeholder Engagement

Source: Created by the authors of this chapter.



We hope that the chapters and practice notes published here will help inform the practices of professionals and reactions and discourse of affected stakeholders, as well as the future academic debate on MSE, including the practical and theoretical challenges of delivering on the ideal of MSE and of building a coherent understanding across regions, countries, cultures, sectors, and academic or professional backgrounds. Marrying the bottom-up needs inherent in the ideals of MSE with the numerous professional processes in which MSE may be an expectation, a practice or a requirement is arguably one of the biggest challenges for the future of MSE. Academics can play important parts in analysing and describing what is and should be done.

In the following section, we recapitulate the key takeaways of this handbook, drawing on its findings as well as on the responses of an online survey carried out with authors of the chapters and practice notes. In the final part of the Introduction (Buhmann et al. 2024), we briefly summarized each of the chapters and practice notes. In this concluding chapter, we revert to some points that emerge from the chapters and notes in order to identify the convergence on MSE, as well as the diversity that they represent. Next, we discuss the need for integration of practices and normative aspects. We suggest trends towards an integration of the various views and perspectives, with a particular emphasis on what makes stakeholder engagement meaningful for the intended beneficiaries of the process. In this way, we set some pointers for future research, affected stakeholders, and professionals to continue carving the road for MSE, and finally discuss what to expect of MSE in the future.

### **Converging Views on the Value of MSE**

The chapters and practice notes published here corroborate the value and spread of MSE. There is wide agreement on the importance of the needs and concerns of affected stakeholders, and of the need of, but also challenges in, ensuring that interaction, which occurs as ‘engagement’, is meaningful to those stakeholders.

Prior to a workshop in April 2023 for authors of this book, the editors set up an online survey questionnaire to explore the perception of the authors of the chapters and practice notes about the practice and future of MSE. Open between March and April 2023, the survey, which was answered by 24 contributors, corroborates several arguments that have been put forward here. It confirms that MSE has been driven by multiple factors, such as: pressures from investors, rights-holders, and NGOs; the growing influence of the UNGPs, OECD Guidelines and other normative frameworks; and a general awareness of the need to transition to a more sustainable, just, and inclusive society. The survey’s answers also suggest that the ideals embodied in MSE adds to stakeholder theory by calling for forms and practices of engagement that are more inclusive of the needs, interests, and concerns of affected stakeholders, such as individuals, local communities, and other adversely affected groups. Several respondents, when questioned about their understanding of ‘meaningfulness’, highlighted the relevance of this bottom-up angle.

The variety of opinions captured in the survey reveals the multidimensional nature of ‘meaningfulness’, which involves traits such as transparency, openness, trust, respect, honesty, depth, adaptation, consent, ethics, collaboration, humility, and a genuine willingness to empower vulnerable people and focus on long-term outcomes. However, the survey also identified many barriers to the realization of meaningfulness. While context-dependent, these barriers tend to be related to the potential weakness of current MSE practices and normative frameworks. These are often unable to challenge the speedy and at times cynical nature of

decision-making by both governments and large companies in the context of projects that cause risks or actual harmful impacts to people or the environment. Without a genuine commitment to a process and outcomes that are perceived to be meaningful by affected people, the process will not be ‘meaningful’ in the sense of MSE.

Capacity building was also identified as an issue. When asked to rank how high or low the world’s demand for capacity building on MSE is, most respondents (72%) agreed that the demand was either high or very high. These findings corroborate the value of incentivizing more studies and training in MSE.

Participants of the survey highlighted numerous examples of emerging hard-law regulations that are likely to make MSE more genuine and stronger. However, these emerging initiatives still tend to focus on particular regions (e.g., Global North) and sectors (e.g., extractives and energy). The survey showed that authors feel that there is room to further develop and refine the regulation of MSE, whether through hard law or softer guidance. Turning to the findings of the book, we make the following observations.

Looking at the conception of ‘stakeholders’, authors across the chapters tend to examine communities as affected stakeholders. In particular, communities ‘of place’, i.e., those who are connected to a particular place as their home, place of work, etc., are common examples. Given that MSE has as much regard to individuals as to the groups that individuals make up, this serves to underscore the place-based effects of many of the activities that give rise to expectations or requirements of MSE. The conceptual chapters by Freeman and Menghwar (2024) and Chen and Stoddart (2024) both target marginalized or vulnerable communities as examples of stakeholders. To various extents, the community perspective is also evident in most other chapters and practice notes. This illustrates that many types of activities for which MSE is relevant as an expectation or requirement entail industrial projects that interfere with land (or water) areas on which individual people who live or work in a community depend. Wu’s chapter shows that such activities may also affect nature, which can also be considered a stakeholder with a claim to having its needs and concerns represented. At the same time, the community focus should not divert attention from the individual aspect of MSE. This may be particularly relevant to rights-holders when the rights of individuals, even as members of a community, are at stake. With focus on a particular community (such as, in her case, a community of reindeer herders), the practice note by Gråik (2024) also recognises the risks to the rights of individuals, for example, when major energy projects create competition between members of the community. In the MSE context, the understanding of stakeholders should go beyond what is typically applied in organizational and impact assessment literatures: it should be aligned with relevant hard-law regulatory frameworks but where relevant going beyond those to capture relevant affected stakeholders. For this purpose, the stakeholder conception can be informed by leading soft-law normative frameworks, in particular the UNGPs, whose description of affected stakeholders (including rights-holders) informs many later soft and hard law frameworks that directly or indirectly cover MSE.

In terms of ‘engagement’, a large variety of perspectives are at play. Jointly, the chapters and notes underscore the variety of time horizons and modes of interaction to be considered for MSE. For example, Amatulli and Nelson (2024) highlight the role of pre-engagement as a way to help prepare rights-holders as affected stakeholders to participate in a decision-making process and prepare for formal consultations processes. Fonseca and Fitzpatrick (2024) and Larsen and Buhmann (2024) focus on impact assessment as a way for affected stakeholders to become involved in high-stakes decisions. Storey (2024) provides a critical

perspective on FPIC as a way to ensure engagement that is meaningful, and Mestad (2024) and Figueroa et al. (2024) offer critical perspectives on the effectiveness of legal rights to consultation to deliver MSE for affected people. Several chapters examine and discuss different forms of interaction between affected people, companies and authorities, in particular in regard to natural resource extraction or siting of wind energy plants, as forms of MSE (Nystø, 2024; Eke et al., 2024; Abdala & Veiga, 2024; Prno, 2024; Jenkins & Kurkinen, 2024; Mohammed, 2024; Asamoah & Anyinah, 2024; Hayes & Romero, 2024). With a textile sector focus, Liang (2024) demonstrates that workers, unions, and civil society organizations are among many other national stakeholder groups that may be affected when foreign investors and operators step into an export-oriented sector. Jointly, these chapters testify to the multiple forms of interaction between affected people, project developers or owners, and sometimes also authorities who issue licences or hold overall responsibility for a process. They point to some of the diverse interests at play and some of the forms in which groups of stakeholders may make their views and concerns known or be represented by others. This also applies to contributions that discuss engagement from a research perspective or conceiving engagement as an integral part of many research methods (Andrews & Saaka, 2024; Rasmussen, 2024). Along with the chapter by Fonseca et al. (2024) on ethics and stakeholder engagement, those contributions also show how research may be extractive (of knowledge), and that individuals or communities on whom research is done may be considered affected stakeholders. Eke et al. (2024) also underscore that in former colonies, for stakeholder engagement to be meaningful, it is important to acknowledge the legacies of colonialism, including the decades of neo-colonial violent competition for resources, corruption, militarism, and criminality by national, regional, and transnational actors.

Several authors also discuss various forms of grievance, accountability, and remedy mechanisms as ways of engagement or ensuring that affected stakeholders are provided with a voice (Wu, 2024; Fitzpatrick & Fast, 2024; Meyerhoffer, 2024; Davidson & Grant, 2024; Mestad, 2024; Gråik, 2024; Rogge, 2024; Putten, 2024; Amatulli & Nelson, 2024; Scabin et al., 2024; Trier, 2024; Fonseca et al., 2024). These chapters underscore the importance of such mechanisms, whether state-based or private, to support and ensure MSE throughout a project or plan – from inception to decommissioning (see Figure 31.2). Overall, there is wide agreement that meaningful engagement should be multi-directional, inclusive of the various actors and affected stakeholders involved; of a character that provides recognition of affected stakeholders' own perceptions of needs, concerns, interests, and rights; and inclusive of grievance, accountability, and remediation processes. Moreover, the chapters show that engagement should go beyond consultation in the formal sense typically required by licensing and impact assessment regulation. This should include interaction to ensure a full and contextual understanding of the needs and concerns of affected stakeholders with regard to actual or potential impacts. It may also include pre- and post-engagement. Pre-engagement refers to interaction before the formal consultation or engagement process, whereas post-engagement is interaction that follow up on the engagement process, whether the former has a formal or informal character. While pre-engagement is gaining some formal recognition (see Amatulli and Nelson, 2024), post-engagement arguably remains less recognised but no less important. For example, the practice note by Gråik (2024) illustrates that even though some engagement did take place around the time a large wind farm was constructed – in terms of a consultation process required by the authorities and mediation efforts under the OECD NCP system – the process fails to extend to the time ten years on when the effects of major social impacts began to play out in the reindeer herding community's social fabric.

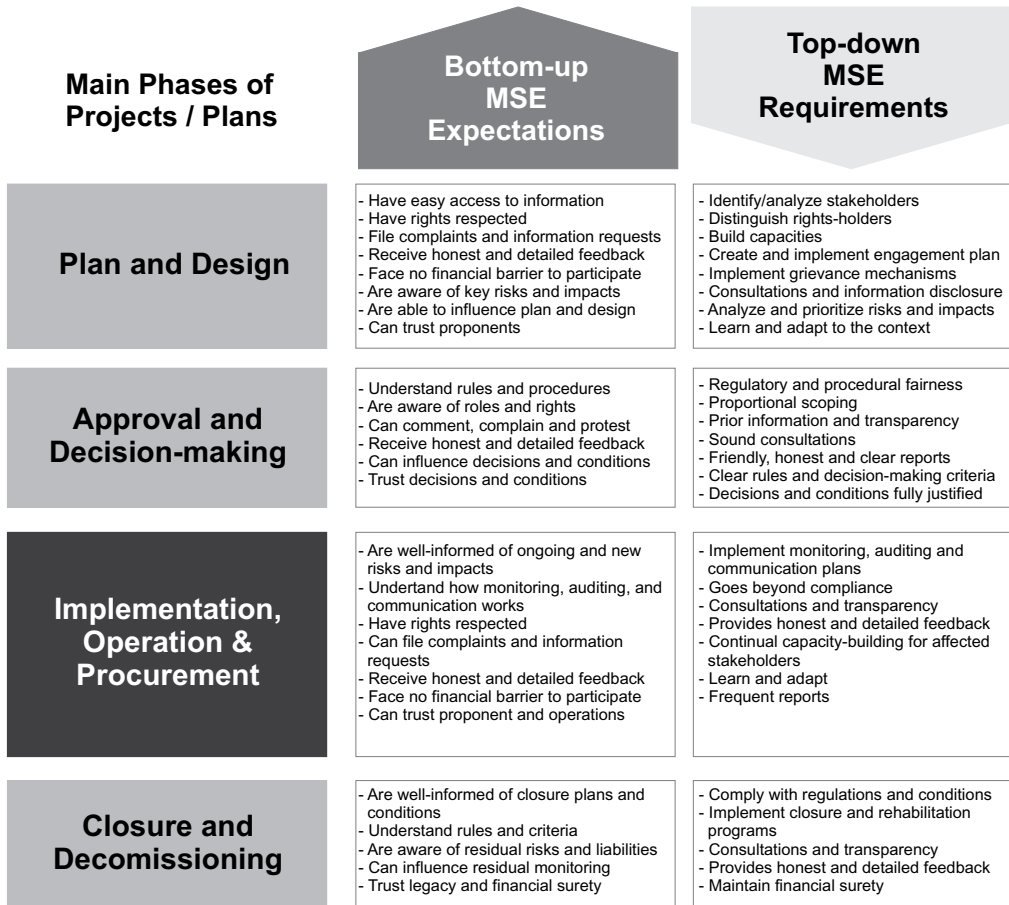


Figure 31.2 Bottom-up MSE expectations versus top-down MSE requirements in production, process, project, or plan life cycles

Source: Created by the authors of this chapter.

The issue of how stakeholder engagement is made ‘meaningful’ runs as a tension in many of the chapters and notes. With a few exceptions (e.g., Prno, 2024; Meyerhoffer, 2024; Mohammed, 2024), the book’s chapters address situations in which engagement with affected stakeholders is or was not fully meaningful. Amatulli and Nelson (2024), Mestad (2024), and Gråik (2024) all point to the importance of an engagement process to take account of the cumulative effects of activities that each on their own may have involved interaction with the affected people. It is also clear from several chapters and practice notes (e.g., Fitzpatrick & Fast, 2024; Storey, 2024; Abdala & Veiga, 2024; Gråik, 2024; Rogge, 2024; Putten, 2024; Scabin et al., 2024; Andrews & Saaka, 2024) that power disparities must be recognised and managed for a process to be meaningful from the perspective of those affected. While power issues often arise between affected stakeholders and other actors, they may also occur within groups of affected stakeholders (Larsen & Buhmann, 2024; Mohammed, 2024; Rasmussen, 2024). Trier’s (2024) practice note highlights the importance of flexibility and creativity to

overcome formal constraints, such as the absence of free trade unions, in order to develop engagement with groups that may otherwise be excluded.

Across the chapters and practice notes, it is clear that to be meaningful from the perspective of affected stakeholders, interactions with project owners, developers, authorities, and other actors should be open to concerns, needs, and interests that are not necessarily recognised as formal rights; and attentive to context and ways to overcome formal constraints. It should include affected stakeholders in the design of the engagement process from the outset; be attentive to implicit and explicit power disparities and to balancing those; be open to adjustments throughout, based on learning and experience; and be attentive to the long-term effects of an activity, with engagement a constant option. It should be attentive to the knowledge needs of affected stakeholders to understand impacts and process responses, and open to local knowledge, insights, and suggestions for alternatives. It is also clear that the process should be attentive to cumulative impacts and oriented towards avoiding harmful impacts throughout the process. Importantly, to be meaningful, an involvement process should be open to adjustments, changes, and learning, and in particular to a proposed project not being a foregone conclusion. Moreover, where a project does go ahead and harm cannot be avoided, mitigation measures, compensation, and any steps related to remediation and the provision of remedy should be fully meaningful in terms of process, context, culture, as well as intersectionality.

At the same time, the chapters and practice notes also display considerable divergence on the various elements of MSE, in particular the notion of stakeholders and the contexts in which engagement occurs. This is particularly clear if we look at the academic disciplines of the contributors of this handbook. This observation underscores some of the current and onward challenges for developing a coherent approach to MSE in theory and practice. For example, authors with a background in the field of impact assessment tend to focus on the consultation processes as aspects of stakeholder engagement (e.g., Fonseca & Fitzpatrick, 2024; Larsen & Buhmann, 2024). Authors with a background in political science tend to emphasize power relations (e.g., Eke et al., 2024; Andrews & Saaka, 2024), whereas authors with a background in law (e.g., Mestad, 2024; Rogge, 2024) tend to emphasize the stakeholder conception of the UNGPs and the role that that conception plays for multiple other normative frameworks relevant for MSE. Given that MSE, as a ‘best practice’ and as a normative concept, cuts across academic disciplines, awareness of such orientations that may be contingent on disciplinary backgrounds may be important for the onward crafting of practices and theoretical framing for engagement that is meaningful for affected stakeholders.

In the first figure presented in Chapter 1 (Buhmann et al., 2024) we provided an overview of the key conceptual elements of MSE based on the extant state of the art prior to this book. In this concluding chapter, after pulling together the many critical experiences and case studies in this handbook, we realize that expectations around the conceptualization of meaningful stakeholder engagement are much higher. As can be seen in Figure 31.1, several new points emerge, in particular around the ‘meaningful’ element. The top part of Figure 31.1 displays the key traits and terms representing the extant conceptualization that is evident in the literature that was explored in Chapter 1. The lower part adds the new insights on MSE and its elements that follow from the chapters and notes in this book, thereby setting the stage for future theorization and practice.

Altogether, the many processes, experiences, and case studies presented in this book suggest that expectations of ‘meaningfulness’ are becoming both more rigorous and more nuanced. While this phenomenon contributes to the overall improvement of stakeholder engagement practice, it also puts pressure on developers, regulators, and practitioners, who

are realizing that more time and resources are needed to take adequate action on MSE. By highlighting the expectations and the emergent elements in MSE, we hope to add to the toolbox of such actors to understand and deliver on MSE expectations and demands, as well as to the toolbox of affected stakeholders to articulate and claim MSE from their perspectives.

### **Towards Integration**

As evident in several chapters and practice notes, the requirements for MSE may affect each phase of the lifecycle of projects, plans, or activities, including design, implementation, production, procurement, investing, decommissioning, remediation, etc. That is so, for example, when MSE is undertaken in a context of risk-based due diligence, because that process presumes that an organization ensures that MSE is undertaken to identify and manage harmful impacts or risks to affected stakeholders along the value chain, including investment chains.

However, what a process of MSE entails may vary significantly depending on one's point of view. As shown by several chapters and practice notes in this book, what MSE means to affected stakeholders (including rights-holders) often differs from what governments and business organizations perceive. The MSE process should be able to properly capture such nuances. A meaningful process yields meaningful outcomes and, in the long term, maintains trust, prevents conflicts, and addresses harmful impacts in ways that are meaningful to those affected. This process should be organized so that it is meaningful precisely from the perspective of affected stakeholders and undertaken in such a manner that it delivers outcomes that are meaningful to them (including, as relevant, adjustments to original plans and processes).

Those who undertake MSE must strive to understand the plurality of views that may emerge in consultations and other forms of involvement and participation. This is particularly important when opposing or conflicting views emerge, given that the long-term risks and adverse impacts of development projects and plans tend to be underestimated by those who benefit from such undertakings.

Most of the growing number of MSE guidance publications has been developed to help those who implement or oversee engagement programs with affected people, i.e., companies, consultants, and government agencies who often represent the 'top' of the process. Very few publications target the information or procedural needs of those who are affected. How should a MSE program be designed and implemented from the perspective of affected stakeholders? As argued in contributions in this volume, answers to this simple question require a bottom-up angle. As shown in Figure 31.2, such an angle reveals issues that are relevant to affected stakeholders throughout the lifecycle of projects and plans.

As Figure 31.2 suggests, the advancement of MSE depends on the reconciliation of the top-down procedural requirements of companies and governments with the expectations and needs of affected stakeholders. Implementing MSE-related procedures and activities is a necessary but insufficient response to the many risks and adverse impacts that emerge in the lifecycle of production processes, projects, and plans, as well as other activities with implications for affected stakeholders. The values and needs of those 'at the bottom' must be properly captured and integrated in engagement programs.

The need for integration also revolves around the take-up of normative directives or guidance that have been, and will continue to be, created to promote MSE, whether implicitly (as in some impact assessment contexts) or explicitly (as in the case of risk-based due diligence guidance or requirements). The world is witnessing a surge of hard-law, legally binding norms pushing for MSE. However, soft-law non-binding frameworks also remain important

and valuable. Soft-law frameworks, in particular the UNGPs and UNDRIP, apply much more widely than hard-law frameworks, which are typically adopted by individual states (or regions, as in the case of the EU) and only apply to certain types of organizations. In some cases, soft-law initiatives complement hard-law regulation by providing guidance for those not directly covered by the hard-law directives, or by explaining details that are important for the effective implementation of the hard-law requirements. Both situations apply to the emergent hard-law regulation of MSE through risk-based due diligence.

At the same time, MSE is governed by a high degree of normative convergence. MSE differs from impact assessment, CSR, and some other related processes because much of the current MSE surge emanates from one single and global normative source, namely the UNGPs. Due to the fact that other international soft-law frameworks with global reach (UN Global Compact, OECD Guidelines, IFC Performance Standards, etc.), as well as much of the national hard-law regulation that is being adopted build directly on the UNGPs in their understanding of MSE, there is little divergence in the overall aim. This does not mean, however, that there should be no divergence in implementation. Given the multiple and very different situations in which MSE is expected, required, or just appropriate (as illustrated throughout this handbook), it is highly significant for MSE to be contextual. Localized expertise and sectoral soft-law guidance can assist in the transformation of the overall normative ideals into practice, and for practice to deliver the overall normative ideals.

Similarly, the advancement of MSE depends on the integration of different practices. As illustrated throughout this handbook, engagement is an umbrella term that describes different types of programs, procedures, and techniques that can be used to inform, consult, involve, collaborate, and empower stakeholders. Engagements can be carried out by individuals or groups of people using a variety of traditional and modern approaches and technologies. MSE entails applying those activities in a manner that is meaningful to affected stakeholders, assists in uncovering their views, needs, and concerns from their perspective, provides them a say in decision-making processes, and ultimately leads to outcomes that are also meaningful to the affected stakeholders. The many practices that derive from the combination of these possibilities play specific and reinforcing roles in the involvement and decision-making process. Therefore, they must be selected and combined in ways that favor the most meaningful outcomes from the perspective of affected stakeholders.

As evidenced by the scholars and practitioners who contributed to this book, different practices have emerged in response to the overall normative expectations and requirements – some more successful than others and many are work in progress regarding the transformation of the ideal of MSE into practice. The bar of stakeholder engagement has risen and expectations for MSE continue to grow. But much remains to be explored. Future studies should continue to investigate MSE to reveal not only the depth and richness of this growing field, but also, most importantly, the many leverage points for delivering meaningful outcomes for affected stakeholders.

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