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Challenges in implementing the corporate responsibility to respect human rights in the context of project-induced displacement and resettlement

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ABSTRACT

The endorsement of the United Nations Guiding Principles on Business and Human Rights in 2011 has led to many multinational companies making public statements of support for human rights. We provide an in-depth analysis of the challenges company staff face in addressing human rights risks at large infrastructure project sites, especially in relation to their resettlement practices. The research was conducted with two projects in Mozambique: an open-pit coal mine; and the construction of a 900 km railway line. With the cooperation of two multinational mining companies, the design, implementation and outcomes of their compensation and resettlement plans were analysed using a human rights lens. Within the companies there was awareness and commitment to ensure adequate replacement housing and to provide financial compensation at full replacement value. However, there were major challenges related to organizational aspects, including significant time pressure from technical departments, an initial lack of planning regarding the management of community impacts and a lack of experienced staff in social departments. Together with various contextual issues, these challenges ultimately resulted in a failure to compensate and resettle all affected people in a manner that was compliant with human rights. We make seven recommendations that are relevant to respecting human rights in relation to infrastructure projects: (1) companies should carefully consider the positioning of the community relations function within the project; (2) there needs to be greater commitment at the project site level and at all project stages to ensure that international standards for environmental and social performance are met; (3) there must be adequate human rights expertise at the project site level; (4) project resettlement and compensation plans and procedures must document how they will address human rights topics; (5) there must be adequate supervision of subcontractors; (6) projects must properly plan to manage human rights issues irrespective of the realities of complex operating environments; and (7) companies should consider human rights issues in acquisitions and de-acquisitions.

1. Introduction

The *United Nations Guiding Principles on Business and Human Rights* (UNGP) (United Nations, 2011) has led to policy commitments from hundreds of multinational corporations expressing acceptance of their responsibility to respect human rights (Business and Human Rights Resource Centre, 2017). The corporate responsibility to respect human rights means that companies have to avoid, mitigate and remedy any negative impacts on human rights that are caused by or related to their activities or the activities of their business partners (United Nations, 2011). The challenge for multinational companies is how they can accomplish respect for human rights in practice, especially at the project site level.

Notwithstanding the numerous corporate policy commitments to respect human rights, there is little information about how companies

actually identify and address their adverse human rights impacts in practice, or about the challenges they experience in their attempts to do so. However, a few studies have been conducted on how local company personnel manage adverse impacts on local communities. Farrell et al. (2012) provided insights regarding internal issues such as the lack of robust planning at the start of a project, the little (or late) involvement of social science professionals, and challenges regarding local community representation and the distribution of compensation and project benefits. Kemp and Owen (2013) discussed the curtailed role of community relations staff in comparison with other departments in mining companies. Also, Kemp and Owen (2017a) provided an analysis of the actual implementation of operational grievance mechanisms at project sites, and the challenges in effectively identifying and addressing the adverse human rights impacts experienced by local communities and individuals. In addition, Owen and Kemp (2015) and Kemp et al. (2017)

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have considered the state of knowledge about resettlement practice in the mining industry. Despite these contributions, there remains a lack of research about how companies operationalise their human rights responsibilities and the challenges company personnel face in managing human rights risks and impacts at the project site level.

The purpose of this paper, therefore, is to consider the actual practice of companies in addressing their human rights issues, and the challenges company staff experience in doing so. We focus on the impacts on local communities of large-scale projects operated by foreign multinational corporations in the extractive industries, with specific attention given to project-induced displacement and resettlement (PIDR). We examine the compensation and resettlement plans and practices of two multinational mining companies operating in Mozambique. PIDR is a contentious human rights issue (Morel, 2014; van der Ploeg and Vanclay, 2017a, 2017b), and over the years has received increased attention from a wide range of stakeholders, especially in relation to the need to improve compensation and resettlement outcomes for the impacted families and communities (Smyth et al., 2015; Vanclay, 2017). When land acquisition requires the removal of peoples and/or their assets, various adverse human rights impacts are at stake, especially the rights to freedom of movement, food, water, health and work (van der Ploeg and Vanclay, 2017a; Esteves et al., 2017). Vulnerable groups and households, including children, are particularly at risk (United Nations, 2007). PIDR is necessitated by various types of development and infrastructure projects, and takes place worldwide and often on a large scale (Terminski, 2015; Vanclay, 2017).

We make seven recommendations that are relevant to infrastructure projects: (1) companies should carefully consider the positioning of the community relations function within the project; (2) there needs to be greater commitment at the project site level and at all project stages to ensure that international standards for environmental and social performance are met; (3) there must be adequate human rights expertise at the project site level; (4) project resettlement and compensation plans and procedures must document how they will address human rights topics; (5) there must be adequate supervision of subcontractors; (6) projects must properly plan to manage human rights issues irrespective of the realities of complex operating environments; and (7) companies should consider human rights issues in acquisitions and de-acquisitions.

The lead author undertook 5 months of fieldwork at a mining site in Mozambique in 2013, and 4 months in 2015 examining a railway project. The research involved an analysis of each project's procedures and activities regarding compensation, resettlement and livelihood restoration, and the extent to which these activities reflected respect for international and human rights standards. The overall intention of the research was not to judge company performance, but to consider the implementation challenges experienced by local staff in order to provide lessons for companies and projects elsewhere.

2. What does respect for human rights mean in practice?

The international community, national governments and local communities confront multinational extractive industries with a bewildering array of expectations and standards regarding how company activities should contribute to the country's and local community's sustainable socio-economic development (Van Alstine and Barkemeyer, 2014; Harvey, 2014; Vanclay, 2017). In addition to the UNGP (United Nations, 2011), a standard that has become particularly significant is the Performance Standard 5 of the International Finance Corporation (IFC), which deals with land acquisition and involuntary resettlement (IFC, 2012). An implication of these standards and expectations is that projects should respect human rights and contribute to their progressive realisation at the local project level through: effective impact mitigation in relation to local communities and the natural environment; the creation of local employment and other benefits to local communities; training programs that facilitate knowledge transfers to local

communities; and improving access to essential services (Wettstein, 2012; Giuliani and Macchi, 2014; Esteves et al., 2017). Companies are expected to build positive relationships with local and affected communities, which over time may result in achieving acceptance, legitimacy and trust, in effect, a social licence to operate (Jijelava and Vanclay, 2017). In order to respect the human rights of local communities impacted by project sites, effectively addressing social and environmental impacts is essential. However, respecting human rights cannot be offset by doing good deeds elsewhere (Ruggie, 2013) through, for example, community development projects or other philanthropic initiatives commonly undertaken by mining companies as part of their corporate social responsibility commitments (Ite, 2007; Esteves, 2008; Esteves and Vanclay, 2009; Kemp, 2010a).

The corporate responsibility to respect human rights requires all sizes and types of companies to identify and address all human rights risks and impacts that arise from their project activities and business relationships (United Nations, 2011). Multinational corporations have to consider how each (proposed) project site might impact on human rights, and how they will address adverse risks and impacts (United Nations, 2011). The human rights risks and impacts at project sites will likely differ depending on the dynamics of the local context. Although many multinational companies in the extractive industries have developed human rights policies and some are active in conducting human rights risk and impact assessments, their efforts to address social and human rights impacts at the project site level may not be sufficiently rigorous (Owen and Kemp, 2014; Götzmann et al., 2016; Smyth and Vanclay, 2017). Corporate involvement in human rights violations increasingly results in various protest actions (Hilson, 2002; Hanna et al., 2016b, 2016a), which can result in court cases with considerable consequences to the companies involved (Drimmer, 2010). The types of corporate involvement in human rights violations that have been identified in court cases include: misconduct by company security forces; company complicity in war crimes; inhumane labour conditions; forced evictions of communities and of Indigenous peoples in particular; and environmental harms (Wright, 2007; Bebbington et al., 2008; Drimmer, 2010; Kemp and Vanclay, 2013; Anaya et al., 2017).

Any large-scale project has the potential to create environmental and social impacts that can result in a detriment to human rights (Vanclay et al., 2015). In the mining industry, community relations departments are now typically tasked with addressing the negative impacts on local communities (Humphreys, 2000; Coulson et al., 2017). A major challenge for community relations staff is how to avoid and/or address adverse human rights impacts at the project site level.

There are many and various ways by which the activities of mining companies potentially infringe on the human rights of local communities (Kemp et al., 2010; On Common Ground, 2010; Rio Tinto, 2013; van der Ploeg and Vanclay, 2017a, 2017b). By the acquisition of land for the construction and operations of large-scale projects, companies will need to consider whether this could lead to adverse environmental, social and/or human rights impacts. In undertaking environmental and social impact assessments (ESIAs) and management plans, most human rights risks and impacts on local communities can be identified and addressed. By way of example, human rights are breached when construction and operational activities obstruct or block a local community's access to basic services or common property resources, thus restricting access to their food, water, housing, cultural and religious sites (Kemp et al., 2010; van der Ploeg et al., 2017). These impacts and risks can be the cause of much harm to communities, protest and litigation (Drimmer, 2010; van der Ploeg and Vanclay, 2017a, 2017b).

A company can infringe human rights when impact mitigation measures do not result in the restoration of access to services or to natural resources that are vital to the livelihoods and wellbeing of local people. Resettlement is too often regarded as a 'rehousing project', focussing only on improving the material quality of houses rather than looking at all dimensions of life and the related human rights that can be affected (Vanclay, 2017; Smyth and Vanclay, 2017). For example,

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