

SUSTAINABLE MINING GETTING RESETTLEMENT RIGHT

COMMUNIQUÉ, NOVEMBER 2015

INTRODUCTION

Oxfam Australia and the Melbourne Business School partnered to host the sixth Sustainable Mining Symposium. The symposium was held in October 2015 and focused on mining-induced resettlement. The event was in English and Portuguese and held under Chatham House rules.

The theme reflects Oxfam's experience that involuntary resettlement is a deeply complex and disruptive process. People can lose their land and access to economic opportunities, and their livelihoods and social norms are often negatively impacted. Resettlement is arguably the greatest risk facing companies and investors, yet planning and oversight is often inadequate and not commensurate with the known risks.

The symposium provided information and stimulated discussion on the following areas:

- Understanding industry experience of resettlement in Mozambique, Peru, the Philippines, Kenya, Guinea and Papua New Guinea;
- Community experience of resettlement in Mozambique including the adverse impacts on women and small scale farmers;
- Planning, monitoring and oversight of the resettlement action plan (RAP) and livelihood restoration;
- Resettlement and community health implications; and
- Understanding resettlement from an investment, risk and governance perspective.

The event was attended by 80 people, including representatives from mining, oil and gas companies, industry associations, financial institutions, legal firms, the Australian Government, academia and civil society. Industry speakers came from Kenya, Peru, Ireland and Paris.

The opening session set the scene. Participants heard that resettlement sits at the nexus of investment and social and environmental sustainability. While the investment community is increasingly interested in understanding resettlement risks, the nature of resettlement — characterised by complex land tenure issues, livelihood restoration challenges, food and water security pressures and social upheaval — means the risks are often multigenerational.

Resettlement is a high-impact event requiring an innovative, multistakeholder approach to planning, monitoring and oversight. Comprehensive risk mitigation is required; however, evidence suggests this is often inadequate and under-resourced. Further, competing land access interests; contested, opaque and sometimes non-existent land tenure; and weak regulatory environments further disadvantage communities impacted by resettlement.

Participants heard that the International Finance Corporation standard on Land Acquisition and Involuntary Resettlement is considered the industry benchmark. However, putting the standard into operation, particularly during commodity price downturns when some companies choose to outsource community engagement functions, can result in inadequate baseline data (and related planning failures), and a decline in community relations.

Companies have learnt from past mistakes, and there was agreement that transparency in resettlement planning was key to ensuring project-impacted communities understand the impacts and also the potential opportunities for economic development.

MOZAMBIQUE MATTERS

Mozambique is a resource-rich country and in Tete province 3,600 people have been impacted by resettlement to make way for the Benga coal mine. Participants heard directly from two Mozambican women on the reality of resettlement. This included:

- Food and water security issues;
- Remote location and related travel and transportation costs;
- Loss of fertile land and access to other economic opportunities;
- The challenge for women 'to be heard' and participate in decisions with both the company, the government and with their community leaders;
- Women and girls bear the greatest adverse impact — economic, social and cultural; and
- Uncertainty about the future and who is accountable given frequent mine ownership changes.

“In the previous location our houses were poor but food was abundant, but a good house without food — what’s the point?”

Legacy issues are a major challenge in the resettlement context. In many countries the government may not have the capacity to undertake the due diligence required for a smooth transition in ownership and to ensure robust ongoing monitoring and oversight. In such circumstances, community anger is often directed at the company, and the risk of conflict — including strikes, damage to assets, and delays to production — is real.

There is a role for civil society in monitoring resettlement impacts and ensuring provincial governments honour commitments and plans. It was suggested that better outcomes may be achieved if project-affected people are involved from the outset, including in the choice and allocation of proposed resettlement sites. Women and girls must be involved, particularly with regard to livelihood restoration programs. In Mozambique, as in many countries, women are primarily responsible for subsistence farming and food production.

INDUSTRY EXPERIENCE OF RESETTLEMENT

Industry representatives shared their experiences in South Africa, Guinea, Papua New Guinea, the Philippines, Peru and Kenya. Resettlement is context specific; however, in all cases — ranging from relatively small numbers (150 people) through to large-scale projects (potentially 11,000 people) — participants highlighted common issues such as complexity, short-planning timelines and potential for conflict. It was agreed that resettlement has 'planned and unplanned' characteristics, and the "unexpected will crop up". This emphasised that companies need to "cast the net widely and plan for everything that could possibly go wrong".

Timing considerations were also an important discussion topic. It is not unusual for some aspects to move slowly (such as the allocation of destination land), then the uplift happens quickly, and the livelihood restoration and agricultural extension programs can take years to effectively implement.

It was evident from the day that resettlement is much more than relocation. A town planning approach will not address the complexity, the impact of social upheaval, and intangible costs such as loss of communal resources such as a river. In short, a "house is not a home". Historically companies have been focused on generous compensation packages, but the industry now recognises that while that is necessary, it is not sufficient.

Livelihood restoration post-resettlement is now a focus and the most challenging issue for companies. It is a long-term process, often taking several years, but requiring adequate food security assurances throughout. Livelihood restoration should be seen as an opportunity for long-term intergenerational economic development. However, it was noted that the needs and aspirations of different generations has, historically, not been adequately planned for.

Company representatives outlined the challenge of how much information to provide, to ensure communities were informed, but recognising that the complete picture is often not known at the outset, can be significantly different from what was envisioned, and must adapt to a changing context.

The example from the Philippines identified the huge upfront investment by the company to develop the RAP and the ensuing regulatory challenges. The government became involved to ensure Free Prior and Informed Consent (FPIC) was enforced. Resettlement can be impacted by unforeseen circumstances, such as regulatory change at a national level, which can alter the risk profile of the project. If the risks are considered too great, companies must be prepared to exit.

In the Peru case, the company considered FPIC to be both fundamental and necessary given the context of communal lands and the risk of social conflict. Voluntary resettlement was the only viable option, but that involved extremely high compensation payments. This raises questions regarding the legacy of this approach should mine expansion be considered, and managing community expectations concerning compensation.

Resettlement planning is impacted by external factors and can result in short-sighted decisions to achieve a quick uplift. For example, government licensing laws can undermine a company's approach to community consultation and negotiation concerning compensation for the longer term.

In Kenya, as in many countries, allocation of suitable land for resettlement is challenging, and further complicated by customary law and conflicting land tenure issues, which can result in tension and conflict. Ensuring impacted people are provided with resettlement options, and involving them from the outset in the planning process, is critical.

Companies are not necessarily best placed to decide where communities should live, and what services and restoration



programs best meet their needs. Getting the balance right between drawing on government resources to assist resettled project-affected people and provision of services by the company (which can result in dependency) is difficult. Migratory populations and ethnic diversity further complicate things.

In Papua New Guinea, 95% of land is under customary tenure and the government does not usually forcibly acquire land. In this example, negotiations over land access and resettlement took five years. It involved a relatively small number of people (150), demonstrating that even small resettlements can be extremely complex. New challenges have emerged as hundreds of other people have in-migrated to the resettlement site with expectations that the company would also meet their needs.

Taking a long-term view of population needs over the life of the resettlement process is vital. For example, will teenagers in the community need houses by the time relocation is implemented. For companies, relocation is only half the job. Building prosperous viable communities, while mitigating the risks of dependence and exposure to uncertainty about the future, requires careful long-term planning.

All industry participants noted the challenge of managing community committees and having confidence that members are representative and have legitimacy. Ensuring young people and women are included, and membership is refreshed, is vital.

PLANNING, MONITORING AND OVERSIGHT

This panel confirmed that knowledge on resettlement planning in the global mining industry is poor. Globally, the scale of resettlement undertaken is unknown and there is insufficient empirical data. However a study of 40 mining company RAPs suggests only 40% contained indicators of a considered approach to livelihood planning and risk identification. This can be improved through better baseline studies as a foundation to monitor resettlement impacts over time.

Participants heard that expectations for improved resettlement planning will only increase, including strengthened community engagement and participation in the pre-displacement phase. This will contribute to better livelihood restoration outcomes post-displacement, which are recognised as the most significant planning challenge.

The International Finance Corporation standard is a mechanism to mitigate resettlement risks; however, there are many uncertain, unforeseen and unplanned elements in mining. When resettlement is deferred as the last option, it results in a significantly reduced window of opportunity for impacted people to participate in decision-making and planning. It reduces the level of control of all stakeholders.

Increasingly resettlement is described as development-forced displacement and resettlement. This emphasises the power asymmetries that often exist between communities, companies and state actors. As pressure is exerted on companies to improve community participation in resettlement processes (including the right to FPIC), it can narrow the planning window, exacerbating the likelihood of resettlement being unplanned. Companies will increasingly be expected to provide a defensible response for

proceeding with resettlement where the planning window is too short and state protections are weak or absent.

Given the planning complexities, there is a lack of industry guidance on resettlement and a limited pool of people with the necessary expertise. The focus tends to be on the development of the RAP, which is relatively straightforward, but not always done well. However, implementation is the real challenge and requires a company champion who understands the social impacts and can manage relationships between the head office and local company staff often tasked with community relations.

Information on decisions to resettle communities is usually made public through the licensing process. As a result, the likelihood of communities being adequately informed is minimal. Access to meaningful information was cited as a challenge, for communities, researchers and investors.

Oversight and governance systems must be in place early in the project cycle. This should include upfront scenario planning and related safeguards. This takes time and must be balanced against the uncertainty that surrounds all projects as to how and if they will proceed.

Participants heard that corrective RAPs can be put in place to deal with the legacy of poor resettlement practice. This can include improved information flows between decision-making groups, establishing an independent grievance-handling mechanism, ensuring greater attention is given to compensation for loss of communal resources.

Capacity building for affected people is extremely important. Civil society can assist through provision of independent advice and expertise to better understand the broader impacts of resettlement and improve negotiation. Too often communities are "hungry for better houses and short-term benefits". Local communities rarely understand the full extent of the change to their lives and how that is considered when negotiating benefits and compensation.

In addition, while mining companies are understandably keen to minimise resettlement, if some households remain in extreme proximity to the project (perhaps anticipating employment), long-term development options may not transpire, resulting in remaining communities also being worse off. Further, tension around benefits can quickly flare between those people who may be impacted by a mining project, and not resettled, and those who are resettled.

RESETTLEMENT AND COMMUNITY HEALTH

In this session, participants heard that resettlement must include planning through a community-health lens.

Resettlement has health consequences, which vary according to age and gender, and these can be better understood if health baseline data is collected and monitored for different community members over time. Monitoring and evaluation of community health data enables adaptive and responsive planning. Community health and wellbeing can have a long lasting project legacy and without adequate planning the impacts can surface years later. Good community health planning is not necessarily expensive and is



money well spent, given it is often the company that is expected to deal with existing and potential health issues when they enter a community.

Practical examples were provided to maximise health outcomes. Houses can be fenced to avoid livestock living within the house and preventing disease; water catchments can be reduced to help avoid mosquito borne diseases.

When resettlement impacts on food security (as is the case in Mozambique), the health and nutritional implications are significant.

INVESTMENT AND GOVERNANCE RISKS

This session discussed the investment and governance risks and confirmed that investors also face obstacles in accessing project information, even when providing finance. It is evident that mining projects inevitably underestimate the resettlement risk, and there is a reluctance to share experience across the industry. A disconnect between company policies and project-level practice, and between the technical and community engagement staff further masks resettlement risks.

The investor community is just beginning to understand livelihood restoration in the context of risk and good governance. It was suggested that reframing livelihood restoration (which implies something is destroyed) as livelihood maintenance and enhancement is a more sustainable outcome. However, participants noted that there are very few examples where livelihood restoration is done well.

Participants heard that the better the due diligence (by mining companies and investors), the lower the risk. For mining companies there are four main risks in resettlement: legal risks, a breach of domestic law, non-compliance with their own and international standards, and reputational risk. For investors, the capital risks can be significant, particularly if there are project delays and shutdowns due to conflict.

While companies require a robust strategy of continual improvement to mitigate the social impact risks, increasingly more innovative approaches will assist in understanding resettlement and strengthening access to information, governance and oversight.

CONCLUSION

For many communities "land is life". The often-contested nature of land use, ownership and tenure, alongside economic development imperatives, is further highlighted when mining-induced resettlement occurs. Compensation alone is not sufficient.

Resettlement is a complex and disruptive process and is much more than relocation. Companies and governments have a strong duty of care for those impacted and their human rights.

There is a growing expectation that planning, oversight and monitoring be improved, particularly in the context of risk identification and livelihoods. It was noted that perceptions do matter, that they often change over the life of the resettlement, and can impact on the success of the resettlement and company reputation.

Involving communities at the pre-displacement phase is vital for improved resettlement outcomes. However, this will require capacity building to ensure they understand the potential impacts and benefits, and are able to negotiate agreements that will stand the test of time.

It was suggested that mine operation management is less complicated than managing any associated displacement. Good risk assessment and oversight is important, but the unexpected usually arises, and corrective action must be taken. Significant investment at the outset of the resettlement process is better than the significant costs associated with resettlement induced conflict and project delays.

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RESOURCES

The Oxfam resettlement report can be found at www.oxfam.org.au/resettlement

The video interview with the ICMM and Anglo American can be found at <https://www.youtube.com/watch?v=1dx0WSImEwI&feature=youtu.be>

Oxfam mining-related reports and other materials can be found at www.oxfam.org.au/explore/mining

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