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Environmental Governance Program (EGP)

Stakeholder Engagement

Knowledge extracted from webinar and Goxi forum Discussions
1. Emerging Critical Issues

What?

Today, the term “stakeholder engagement” is emerging as a way of describing a broader, more inclusive, and continuous process between a company, government and those potentially impacted by mining activities that encompasses a range of activities and approaches, and spans the different stages of the mining cycle from planning to post-closure. Meaningful stakeholder engagement refers to ongoing engagement that is two-way, responsive and conducted in good faith.

Why?

Stakeholder engagement is an area that is growing in importance as communities increasingly experience the impacts of big extractive projects and as companies move into more social and environmental fragile or risky areas.

While there is a lot of guidance on how to ensure stakeholder engagement mostly targeted at companies, there are still major challenges around actual implementation, especially ensuring that public consultation and other forms of community engagement represent a constructive ongoing dialogue - between companies, communities and the government - and one that leads to positive outcomes for local people and broader society. Stakeholder engagement is needed to achieve consensus about how to share the benefits as well as how to manage the risks of mining, including environmental risks.

Participation

Participation is key to stakeholder engagement. It serves to build trust between the different stakeholders. Participation is a core human rights principle. There can be no participation without communication. Communication is a tool to create participation (assessment of for example stakeholders, strategy design, implementation and M&E) To engage stakeholders and to make participation meaningful requires a lot of planning.

There are a number of critical issues in stakeholder engagement. One of these is to better understand the complexity and dynamics of participation. Some of the key characteristics related to participation include:

- The key-defining element of participation is power.
- Participation is situated in particular processes, localities and actors.
- Participation is invitational and not imposed.
- Participation is dependent on how we ´think participation´.
- By dividing stakeholder engagement into different phases, it is easier to identify key activities such as monitoring or impact assessments.
The mining cycle includes the following phases: Planning, exploration, pre-feasibility and feasibility, construction, expansion, closure and post closure. Each phase can be an entry point for stakeholder engagement.

**Key aspects to ensure meaningful engagement**

Other key aspects and principles to consider in ensuring meaningful engagement and participation include:

- **Principles of accessibility and transparency:** Information must be available, relevant and updated for all stakeholders at any time.
- **Use impartial data and technical information,** ideally provided by an independent third party.
- **Sufficient capacity for negotiation and to understand technical information among the state, local authorities, communities and all relevant stakeholders.**
- **Ensure the right stakeholder representatives are involved.**
- **Use a neutral facilitator/mediator to ensure and build trust.**

**Mining and the SGDS**

There are several references to participation in the Sustainable Development Goals (SDGs). Mining impacts all 16 SDG’s. It impacts six goals most directly. These include:

- **SDG 9** Infrastructure, Innovation, Industrialization
- **SDG 8** Employment and Economic Growth
- **SDG 7** Energy Access and Sustainability
- **SDG 6** Clean Water and Sanitation
- **SDG 15** Ecosystem and Biodiversity Protection
- **SDG 13** Climate Action

Even though there are many normative frameworks in place and initiatives that guide stakeholder engagement processes, there are still gaps going from policy to practice. More enhanced dialogues and partnerships are needed to minimize the negative impacts of mining. For example, consultation with communities, related to impact assessments before issuing a mining permit are seen as important, they are often perceived as a formality or a one-time meeting. *How can the process be more aligned with the real underlined purpose?*

**Benefits of stakeholder engagement**

- Understanding evolving interests, issues and concerns.
- Building confidence with communities when concerns are integrated and reflected in decision making.
- Legal requirement, ESIA, right to participation especially of special groups, e.g. indigenous people.
- Collaborative problem solving facilitates and builds an ongoing relationship structures.
• Mitigating against and minimizing conflict and all the cost that comes with it.

Benefits to the company

• Improved communication between stakeholders.
• Both the company and community gain access to critical information e.g. community experiences.
• Improved risk management, i.e. early detection of potential areas of conflict
• Enhanced confidence by the community-social license to operate.

Benefits to the community

• Greater opportunity to contribute to policy/development.
• Opportunity and ability to be heard.
• Increased access to information.
• Increased accountability of company to honor obligations.
• Increased understanding of the project and capacity to negotiate.

Benefits to the government

• It is important for the government to pass information to the community even before the arrival of the mining company. When governments share this information there is enhanced trust by the community.
• Opportunity to learn about community concerns and integrate them into policies and future contracts.
• Opportunities for future projects.
• Increased accountability of government to honor obligations.
• Identification of areas of mutual interest.
• Opportunity to partner with community in project monitoring.

Participation as a requirement

Stakeholder participation is a requirement of most extractive projects, particularly those that partner with or receive funding from large multilateral organizations and governments. Today most governments have statutes that range from encouragement to stricter laws regarding public engagement. These cover national governments all the way to municipalities and departments that interface regularly with the public. Entities include local zoning departments, environmental agencies or other public offices that have oversight of extractive projects or other types of projects with significant social and environmental footprints.

International conventions

There are international treaties and conventions that require the signatories of those conventions to engage in stakeholder engagement or community participation. Principle 10 of the Rio Declaration on Environment and Development and the Aarhus Convention provide strong frameworks to engage the public effectively. Other important international standards are the Global Compact, guiding principles on business and human rights.
**Safeguard policies**

Beyond international declarations, there are standards and safeguard policies of multilateral organizations, big bilateral lending banks and government regulations which all require some sort of stakeholder engagement for the projects they support. The most cited are the *Performance Standards* of the International Finance Corporation, the private sector lending arm of the World Bank Group. As such, mining extractive companies which borrow from the IFC for private sector projects are required to comply with those standards as a condition of their loans.

Stakeholder engagement *Performance Standard 1* establishes the importance of an integrated assessment to identify the environmental and social impacts, risks and opportunities of projects and to effective community engagement including through disclosure of project related information and consultation with local communities on the matters that directly affect them.

For example, the IFC is now requiring mining companies to develop and implement a stakeholder engagement plan that is scaled to the project risks and impacts and tailored to the characteristics and interests of an affected community. Many other institutions now have similar safeguard policies and standards and all of those require stakeholder engagement.

**Free, prior and informed consent**

Free, prior and informed consent deals specifically with establishing bottom up participation and consultation of an indigenous population prior to the beginning of a development. That is a requirement that is included in most of the standards nowadays and it specifically requires engagement for the explicit purpose of obtaining the permission of indigenous people around big projects. However, the standards alone are not enough. Without mechanisms for holding those organizations accountable to the standards, standards really have little meaning or impact.

**Access to remedy**

Access to remedy are mechanisms that offer an opportunity for communities to raise grievances about projects when they believe that standards are not being followed. All of the multilateral and bilateral banks and development organizations that have these standards now have such mechanisms in place. They are usually both a compliance and a mediated problem-solving approach to manage grievances.

**Complaints**

Complaints usually stem from communities not being adequately or meaningfully engaged. Many project developers treat stakeholder engagement requirements as a one-time exercise to be checked off the list. In these cases, dialogue and engagement are not taken seriously and result in adverse effects further down the line in a project.

Stakeholders and their views need to be vetted very early on. In order to achieve any degree of meaningful stakeholder engagement profound knowledge about an area and its history,
population, the project goals, social relationships, past environmental issues and the cultural context of the region is needed.

2. Practical Tips to develop a stakeholder engagement strategy

Before you start

- What do you aim to achieve?
- What changes or products do you want to create?
- How will the changes/products benefit project operations?
- How will they benefit the community?
- How will they benefit other partners

Establish some principles

- To guide all aspects of the stakeholder engagement process.
- Provide a consistent set of values and beliefs throughout the engagement process.
- Tool for self-reflection: how well current or past efforts of stakeholder engagement align with stated principles.

Community engagement

If previously the community has not been involved in stakeholder engagement, one might find that there will not be much feedback from the community using formal channels. In this case one has to look for other channels to get that feedback while trust is being built. Stakeholder participation is not a one-time event, it needs to happen continuously through the mining cycle.

Some principles

In Kenya public participation is a requirement by law and that also binds the state in the first instance. By ensuring public participation the state in this case is also honoring its obligation in law. Stakeholders in Kenya were asked to develop some key principles related to stakeholder engagement. These are:

- Inclusivity
- Early start
- Engage for the long-term
- Engagement in good faith
- Transparency
- Two-way communication
- Accountability
- Ensure its fit for purpose
- Adaptability
- Commit to the process
Strive for mutual benefit
Specificity

Strategic communication planning

To start a stakeholder engagement process it is recommended to carry out an assessment that later can translate into a strategy with clear objectives and target groups. Not all identified stakeholders need to be addressed in this strategy. Specific target groups should be identified in this process. Key questions:

• What is the problem?
• What is the purpose of the engagement strategy?
• Who are the stakeholders?
• What are the challenges, barriers risks and possible solutions?

3. Public authorities and other actors sharing experiences

Case Study of Public Participation in Kenya

Commercially viable coal deposits were discovered in Mui basin of Kitui County in 2010. Several steps were taken to include the public in the consultation process. This included a state of the County report that was made available and provided information about the coal mining project. In addition, Kitui County government mobilized public participation via radio and television programs, newspapers and other forums.

While the first public participation phase enlisted 500 key participants from professional bodies, religious organizations, private sector, business associations, civil society and local community, the second phase involved 700 participants. The third phase had 300 participants that consisted of mainly youth. Moreover, the Government established Liaison Committees for the project. These committees were elected by the communities living in the basin with the mandate to represent them on matters relating to the coal project.

Petition in Court of Law

Despite the attempts of public participation, some members of the community felt that the stakeholder engagement process was not been carried out as they had expected or to their satisfaction. If the development went on, the community felt that their right to property would be threatened as well as the right to clean and a healthy environment. Despite the three phases of public participation, the community raised a petition in a court of law to determine whether there was adequate public participation in the coal mining project.

Based on the evidence and the number of participants and forums for public participation, the court found that there was adequate public participation for the coal mining project. The community was still not satisfied with the ruling and appealed.
The basis for this was as follows:

- Protection of cultural heritage: It was not clear how the cultural heritage would be preserved.
- Benefits sharing mechanisms: There was no clear compensation framework based on the market value of the land and other developments by the community. In addition, the job opportunities to the local community was not clearly prioritized.
- Land adjudication. Eighty three percent of the locals have not titles to their land with fears of cartels taking over and freezing land ownership.
- Community fears and expectations: The impact of the project on the community had not been disclosed.

Current status

- There were supposed to be community development agreements signed but this did not happen.
- The liaison committee held a few sessions in Nairobi but not in the county where the project was supposed to take pace. In addition, the mandate expired and had not been renewed.
- The mining license has expired and so far, no renewal has been made.
- In summary, there is no mining activity going on in the Mui basin.

This case study shows how stakeholder engagement can be a legal risk and that communities can also use judicial mechanisms to protect and ensure the respect of this particular right.

4. Questions from Webinars and GOXI Audience

- What are the indicators of effective stakeholder engagement?
- What is required to convince companies and government to spend more time and money and build systems for meaningful stakeholder engagement? For example, how important is it for companies to track and report all the costs of conflict further along the project cycle? (i.e. delays, lack of permits, site closures, etc.)
- How do you handle stakeholders’ disagreement and divergent views during engagement in order to establish what they really want?
- Is it possible to get direct benefits for the community included in the project execution such as schools, hospitals, and other services to improve community life?
- Some mines are located in protected areas or potentially protected areas such as national parks. What measures can be put in place for an intersectorial stakeholder engagement with indigenous people?