

# The weakness of resettlement safeguards in mining

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**Given the levels of uncertainty that surround mining activities, it is questionable whether current planning practices can safeguard against the risks associated with displacement and resettlement, and whether industry practice is consistent with the responsibility to respect human rights.**

Studies of displacement and resettlement associated with mining operations continue to demonstrate consistently high levels of impoverishment among displaced people,<sup>1</sup> and that knowledge-building and management practices within the mining industry to uphold international standards are weak.<sup>2</sup> The implications of this are far reaching. Host and settlement communities will confront heightened risk of human rights violations, poverty and social instability. Governments will bear long-term liabilities caused by the displacement, including pressure to address impoverishment risks in

remote locations. Companies will experience increased opposition and reputational risk as well as higher operating costs when resettlement issues remain unsolved. Finally, international financial institutions (IFIs) will feel the effects of heightened public scrutiny over their adherence to due diligence vis-à-vis basic human rights in their lending practices to the extractives sector.

In 2001, the World Bank established its Operational Policy on Involuntary Resettlement (OP 4.12), based on a set of known displacement and resettlement risks, to guide lenders and states in

undertaking due diligence for large-scale development projects. Michael Cernea's Impoverishment Risks and Reconstruction model for resettlement<sup>3</sup> is widely recognised as the conceptual foundation of both the World Bank's resettlement policy framework and the International Finance Corporation's Performance Standard 5 (IFC PS5) on Land Acquisition and Involuntary Resettlement.<sup>4</sup> The IFC PS5 has become the default international standard for the mining sector and while civil society organisations have not explicitly endorsed the IFC standards, there is nonetheless a practical acceptance that the standards provide a minimum for protecting affected populations from known resettlement risks.

Displacement is a common occurrence in mining developments but there is a marked absence of data on its scale and frequency. Data are available on a case-by-case basis but this is dependent on developers or third parties disclosing planning documentation. Individual cases include:

- Construction phase of the Ahafo Gold Mine in Ghana involved the resettlement of 823 households (2004)
- Nui Phao Gold Mine in Vietnam resettled 884 households (2005)
- Anglo America's Limpopo mine in South Africa resettled approximately 957 households (2005)
- The Phulbari Coal Mine in Bangladesh reportedly resettled 9,760 households (circa 2008)
- Glencore's Xstrata's Prodeco coal mine in Colombia resettled 600 households (2010)

### Planning in a highly volatile market

The primary underlying assumption in international safeguard standards is that the risks associated with displacement and resettlement can be predicted and mitigated. If developers make efforts to identify the risks, and plan accordingly, it follows that fewer risks will materialise for the displaced population. A second assumption is that developers will actively work to protect their own self-interest. The standards are thus designed to assist companies to diagnose and respond to project-based risks and protect their so-called 'social licence to operate'.

Taken together, these two assumptions suggest that resettlement risks can be managed and that mining companies will invest in resettlement planning because it is in their best interests to do so. However, there is little evidence to suggest that mining companies agree that investing in social safeguards makes 'good business sense'. On the contrary, many mining companies fail to calculate the full cost of resettlement and tend to defer allocating the necessary resources.

The ability of developers to pre-define the scope of a large-scale capital-intensive project is critical to the 'planning as a safeguard' proposition. Knowing what land will be needed and what impacts will be felt in which locations and at which phase of the mine's life cycle under which market conditions is pivotal to whether a developer will be able to effectively design and resource a programme of appropriate and affordable measures to minimise the negative impacts on people of being resettled. But pre-defining these elements is difficult when bringing a large-scale mine into production, especially given variables such as the availability and affordability of land, water, energy and new technologies, and rapidly changing market conditions, including consumer demand for commodities. This can result in projects taking over land (and causing displacements) on an ad hoc, opportunistic basis rather than as an organised 'front-end' activity (that is, at the commencement of the mining project). A high proportion of resettlement events occur as the result of project expansions during the operational phase of mine life, once a project has proven its profitability. Unless mining and resettlement planning takes into account this element of uncertainty, and occurs within an institutional framework of responsible governance, planning may not be the safeguard instrument that it is so readily assumed to be.

### Uncertainty, regulation and informed consent

When governments initially permit a mining project, permissions are based on a project design with stated risks and plans for mitigation. Where communities are

involved in consultation processes, it is the initial project design that is presented and discussed. What the project may actually look like in future is unknown. Mine expansions, even if incremental, result in changes in land use, as well as social and environmental impacts. A project that – on paper – did not involve involuntary resettlement in the early stages may soon after necessitate resettlement in order for the project to remain economically viable. Newmont's Ahafo Gold mine in Ghana, for instance, resettled communities in four separate stages between 2004 and 2012 in order to accommodate additional infrastructure and an increasing need for land.

As a front-end activity, resettlement planning allows developers and governments to make decisions about what social and economic services are needed to support displaced and receiving communities, and how those costs will be met over and beyond the life of the project. The planning window for displacements that may occur in the operational phase of mine life is often narrow. This tends to result in short-term reactive planning without clear strategies for how resettlement risks will be resourced and managed into the future. At the Porgera Gold Mine in Papua New Guinea, for example, over the last thirty years many households have been relocated on more than one occasion within the geographical area covered by the mine's lease. This practice of ad hoc relocation and the uncertainty as to whether additional relocations will be needed constrain both the mine's ability to operate and the ability of residents to maintain a basic standard of living.

Other front-end considerations bring human rights to the fore. The issue of 'free prior informed consent' (FPIC) raises important questions about how power is exercised in major development projects. Although the interpretation of what FPIC can offer communities varies, it is generally understood as advancing the rights of indigenous people, with advocacy organisations emphasising the right of communities to veto development projects. While many in-country jurisdictions do not

support the right of local communities to reject projects outright, FPIC is increasingly being promoted as a means to strengthen the voice of communities in consultation processes, including relating to resettlement.

As above, a major challenge exists in terms of communities providing consent for a mining project to have the right to proceed when it will inevitably evolve beyond what the parties had originally agreed to. While in some cases companies may defer resettlement until it can no longer be avoided, it is also true that companies may not have information at hand about how the project will develop in future. Even in instances where companies have access to this information, they may not engage in a process of meaningful dialogue with affected communities.

This is not to suggest that planning cannot or does not occur in these circumstances. The issue is rather whether planning under these circumstances has the safeguarding effect that is pre-supposed in international and corporate policy frameworks. The provision of information, choice and opportunities for consultation are all possible, even when resettlement planning occurs on an ad hoc or opportunistic basis. Participatory activities can be constructed even within heavily compressed timeframes, and information can be disseminated in a fashion that satisfies



Local people against the Phulbari Coal Project on a seven-day, 250-mile protest march, October 2010.

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basic compliance requirements. However, integrity of process is clearly critical to the underlying value of planning as a safeguard. This would involve resource developers taking active responsibility for planning and managing resettlement risks. The particularities of the mining industry and the tendency of companies to defer resettlement until deferral no longer makes good business sense cast serious doubt on the ability of companies to safeguard through planning. Unless there is a greater commitment to resourcing resettlement – not just planning for displacement – impoverishment will continue to be forced upon people resettled by mining.

### Ineffective incentives and deterrents

Nation states are progressively updating mining and environmental laws relating to resettlement in order to bring national regulatory instruments into closer alignment with international standards and policy frameworks. At the same time, NGOs are more actively campaigning against mining companies that fail to protect displaced persons from resettlement risks. Even with stronger incentives in place to plan for displacement and resettlement, however, the particular characteristics of the mining industry will continue to militate against front-end planning.

The mining sector has long promoted the view that it is in the industry's best interests to invest in corporate social responsibility initiatives and to maintain strong relationships with host communities. According to concepts such as 'social licence to operate', mining companies need to achieve an 'agreed' level of social performance in order to continue operating within a given context. Social licence assumes that communities can and will withdraw their support for a mining project, that withdrawing support will have a major detrimental effect on the economic viability of the business, and that mining companies proactively manage the risk of losing their social licence out of self-interest.

Current evidence would suggest, however, that mining companies do not see resettlement as a significant risk to social licence or to the viability of their operations. It appears rather that companies ignore that risk until such time that impacts ensue and a crisis presents a risk to the business. In other words, companies are unlikely to do the right thing solely on the basis that it will be bad for business if they do not.

When lenders are directly involved in enabling displacement, one might expect their additional oversight to yield an improvement in the way developers approach the management of resettlement risks. However, a recent internal review by the World Bank Group and reports by various consultants and academics highlight the lack of enforcement by lenders, even after repeated instances of non-compliance have been identified. Rather than reducing resettlement risk, lenders have instead become complicit in mining's impoverishing effects.

When resettlement risks materialise, displaced persons face real harms and deprivations. Significant shifts in mining industry practice are required if social safeguards are to have a meaningful effect on the ground.

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