

What's the benefit? Dispute resolution in mining

Steve Fisher describes some of the challenges and approaches to dispute resolution to bear on the impact and outcomes of mining development on local communities.



Local development outcomes from mining

Achieving positive local impacts from resources projects is one of the most challenging areas of development policy and practice. The implementation of investments in mining is often affected by disputes while the value of outcomes for nearby communities is frequently low or contested.

Through Community Works, a consulting practice in management and research for the social enterprise sector, I have recently been working with mining companies in India to train key staff in

ways to achieve better local development outcomes for people affected by mining projects.

In this context, development outcomes are improvements in social, economic, environmental and cultural well-being achieved through a combination of local knowledge with external support. The project supports mining companies to achieve better local development outcomes during the process of planning, design, implementation and decommissioning of mining projects.

Improved approaches to achieving development outcomes

For mining projects to become a more consistent contributor to local development, improved approaches are required. These fall under four broad headings:

1. Defining development outcomes

A frequent problem in working out how a mining project can be implemented is that the mine company and the affected communities rarely reach a shared understanding of the scope and nature of local development. Understanding development priorities and goals is a prerequisite for negotiating how they might best be achieved.

2. Community engagement

The goals of better communication and rapport between mine companies and affected people mean little if the mutual understanding of the different perspectives and priorities between the two groups is poor. For example, companies can lack self-knowledge on the way their conduct is perceived by communities while the complexities of local decision-making arrangements and cultural considerations may be hard for local people to describe to outsiders. Fundamental cross-cultural understanding is essential to achieving better development outcomes at a local level.

3. Benefits distribution

The way in which benefits are packaged and shared with local people is also a subject prone to over-simplification. Benefits include financial transfers, employment opportunities, local facilities and amenities, community programs and share equity in the company itself. The way in which packages are tailored to individual, household and community needs is complex but the end

result is potentially a direct and positive impact on local development. Yet benefits distribution often receives scant attention in the planning of mining investments.

4. Resettlement

The degree to which resettlement is an issue in mining projects varies according to location. In countries such as India, where thousands of families may be subject to resettlement, it is the main challenge. Resettlement arrangements are very difficult to negotiate and achieve because the impacts of the displacement of any community from their homes are hard to predict, to value and to compensate for.

Of course, relocation is not just a matter of physical upheaval. Livelihoods are displaced, historical and family connections lost and cultural and religious impacts will often be felt. The implications for the mental health of affected people may often be overlooked.

Sources of disputes in mining

In settings involving mines and local communities, disputes fall under two broad categories of benefits distribution and resettlement. Other disputes occur over the negative impacts of mining, such as pollution, but these are not the subject of this article. Instead, I will concentrate on the role of alternative dispute resolution in achieving better development outcomes.



Local employment and business opportunities are often part of the benefits expected by communities affected by mining.

Starting with benefits distribution, disputes are most likely to arise over the degree to which local people gain access to the benefits of mining. This means opportunities for economic gain, such as through employment, but also improved local infrastructure and services. I lived in Peru in the mid-nineties, close to the site of a large mine site. It was the early days of the project and local people were watching closely to see what changes it would bring. At that time, much talk locally was about the frequent departure from the mine of heavily-armoured trucks carrying gold and the stark impression this created of the resources being taken elsewhere under armed guard. Another local talking point was the price of housing, especially increases in rents in the local area.

This benefitted landlords more than tenants, of

course. Mining projects lead to changes in economic distribution. The way in which this process is managed is often a source of conflict.

In 'Getting it Right', their book on corporate and community relations, Luc Zandvliet and Mary B. Anderson develop a framework for analysis of the subject. It includes three key elements; benefits distribution, corporate behaviour and side-effects. Mining companies often over-emphasise the importance of benefits distribution while under-valuing the impact of their behaviour and the side-effects of operations. For example, mine sites may be surrounded by security guards and high fences, which present a certain organisational behaviour to the outside world. Pollution levels may be higher than intended, causing disturbance or anxiety to local farmers. But companies often consider that the priority to be addressed in dealing with local people is the level of benefits to be negotiated with them. And yet it is the behaviour and side-effects of the operations that are often the principal concern of nearby communities.

In addition to opportunities to gain a share of the benefits of mining, people often want to be properly compensated for losses of land, livelihood opportunities, social and cultural assets. Historical and religious connections to place are naturally very important. The difficulty of placing a value on these losses exposes cultural differences between outsiders from mining companies and local people. In India, factors of caste, kinship and language add to the complexity.

Disputes arising from resettlement stem from the way in which it is planned and the anxiety that displaced people face about perceived promises made to them compared with the possible realities they will face after resettlement. This has been one of the major problems confronting the development of water resources through dam projects, which inundate extensive areas of land and often lead to the displacement of large numbers of people. The World Commission on Dams was established to address conflict between governments, dam-builders, affected peoples and environmental groups. It produced its final report in the year 2000, which included a recommendation that no person should be worse off as a result of being resettled due to a dam project.

No such international principles or guidelines exist in the mining industry. But the fact is that even simple rules, while attractive as a means of reducing conflict by narrowing the parameters within which the impacts of mining are felt locally, are themselves open to uncertainty. After all, what does 'not worse off' mean when some losses are impossible to value?

Challenges in dispute resolution between mining companies and affected people

Power imbalances

The mediation of disputes is challenging where significant power imbalances exist between the parties. When poor local communities, who may lack knowledge and information, whose land tenure is uncertain and whose leadership is inexperienced, face organised, resource-rich mining companies, it is hard to imagine a more unequal balance of power.

Cultural barriers are often hard to overcome. Recent research by the Desert Knowledge Cooperative Research Centre (DKCRC) in the East Pilbara and Western Desert region of Western Australia examined the obstacles to community engagement in the delivery of services such as housing (McGrath et al, 2010). Two major service providers are active in the region in the form of the Government of Western Australia and BHP Billiton. But despite plenty of goodwill in seeking to work with local people, the presence and voices of Martu people in the service delivery system was almost entirely absent. Mutual understanding of the structures, functions and priorities of government and the mining company on the one side and Martu people on the other, was very limited. The only examples of where cultural barriers had been overcome were when intermediary organisations had worked effectively between local people and the mining company.

I worked in Central Australia for several years and saw many examples of failings in cross-cultural communication. The most stark example was during the implementation of an electricity project in an Aboriginal community in which a multinational company from outside the region was contracted to provide specialist support. In this case, an intermediary organisation was involved in the process. When told that work by the contractors would not be possible during a particular week as local people were meeting cultural obligations, the manager of the project said they simply needed to get out of the way so the project could start on time. This was a modern variation on the notion that tradition and culture holds up progress.

But it is also the case that mining companies can find themselves short of the necessary information to determine who actually lives in a local community. Where people are nomadic,

mobility to and from other towns is high or where people migrate for work on a seasonal basis, it may be difficult for outsiders to know who to talk to or who may be entitled to benefits or compensation. In some situations, once the intention to expand or develop a mine site has been announced, mining companies have reported sharp increases in claims from people who say they live locally. It may be in the interests of nearby communities to remain vague in their descriptions of the importance of local religious and cultural sites or the numbers of people affected by the mine.

Preparing for dialogue

The challenges for alternative dispute resolution practitioners working between local communities and mining companies often lie in creating an environment where a conversation can take place. This implies that mediators need to allow for ample preparatory time with all parties to ensure that they are able to express themselves in ways that can be understood by the other side. This may be most obvious in cases of the use of technical language by mining operators or terms used by local people to describe particular places. But it also applies to the way in which the parties discuss their needs and priorities. Mining companies are used to a high degree of measurement of, for example, volume, area, productivity and cost. Local communities may measure their assets of land and their agricultural products quite differently and include cultural and historical values on the way that they go about their business. The mediator needs to find ways to bridge the communication gap.

In Peru, I worked with a team that managed development projects with remote communities located close to a mine. Given the lack of roads, the best way to reach many settlements was on horseback. On one occasion, we sat down for a meeting with around fifty people who gathered on our arrival. We explained that we were from a local organisation that was interested in working with them to improve the village. But first we need to know your priorities, we said. There was a long silence during which time I noted that the school was in poor condition, there was no electricity or potable water available. And health services appeared limited. But the locals had no answer. 'We don't understand the question' they explained. It was clear that their limited contact with other places meant that the question would always be a hard one to answer. If you haven't been to villages with better facilities, how do you know what development is. And if people don't know what they want or need, then it is difficult for them to negotiate with a mining company.



The right location for meetings between mining companies and local people is essential to meaningful dialogue.

In situations where local communities may be unaccustomed to interacting with outsiders, mediators need to invest time in preparing them for a conversation in which they may have no experience at all. They may therefore be uncertain of how to gain the best result from it. Similarly, mining company staff may be much less confident of the best way to communicate with local people than they appear. Under these circumstances, improved development outcomes are critically dependent on the effectiveness of the mediator in supporting both parties to interact in a way that builds understanding between them.

Settings for mediation

Effective mediation between mining companies and local communities requires special attention to the setting in which the mediation will take place. Some mining companies still take the view that local people should sign in at the gate and sit in the waiting room until the company managers are ready to see them. Managers may feel they are too busy or uncertain of where to go if they visit the community. Or they may feel unsafe. Discussing with both parties a suitable location, which may be in a nearby town or a neutral place away from the mine site, including outdoor locations, is a priority. Mediators need to understand the multitude of reasons why one place may be preferred over another and to work effectively to reach the right decision.

The Department of Resources and Tourism of the Australian Federal Government has produced an excellent set of publications on sustainable mining. The one about community engagement and development (Commonwealth of Australia, 2009) includes a generational framework that summarises the evolution of community and stakeholder relations through which, to varying degrees, the mining industry is passing. Traditional approaches within the industry focus on the provision of information that emphasises scientific and technical compliance with regulations and takes a fixed and one-way view of the value of communication. Emerging approaches concentrate much more on sustained dialogue based on good relationships with the range of stakeholders who have an interest in the project.

It remains the case that ongoing personal interactions between mining staff and local people are very difficult to achieve. Miners drive through communities on their way to somewhere else. They may live far away from the site itself (for example, in the case of fly in-fly out workers) and the site itself is not accessible to locals. So the interaction between residents and mining company staff may be rare indeed. Where people don't often meet, they may begin to characterise the other in negative ways, increasing the potential for disputes. The strength of mediation for addressing disputes in mining settings lies in the opportunity to bring the goodwill that often exists within mining companies and communities to the meeting table. The key factor for the mediator is to achieve early and constructive meetings between them. As we know, too often mediators are invited into the process when the dispute has already reached an advanced state.

In adapting the principles and practice of mediation to these kinds of situations, the intake phase of the process is therefore critical. Without proper preparation, the potential for joint mediation meetings to become simply a restatement of entrenched positions on either side is high. The role of the mediator is to help the parties engage in a process of discussion about existing or potential disputes. This is particularly demanding where communities may feel threatened by new or expanded mining operations or the mining company feels it already has approval to mine through its licence. Improved development outcomes rely entirely on the mediation taking into account the broad impacts of the mine, both positive and negative. These should include benefits, behaviour and side-effects of the operations of mining companies.

Embracing complexity

While mediation will need to concentrate on the particular dispute at hand, which often relates to resettlement or benefits, other subjects are usually connected in some way to the central problem. The mediator therefore needs to help the parties make the connections explicit, so that the complexity of the subject is properly recognised.

So that mediators can work effectively to help identify the specific subjects that a mediation process can address, as many relevant topics as possible need to be on the table. This may include:

- The precise arrangements and timing of resettlement; anxiety on both sides can arise from uncertainty about resettlement and how it will work in practice.
- The location of sites of historical, cultural or religious importance and plans for them; sometimes communities may agree to the relocation of temples or trees, for example.
- Proposed changes to infrastructure (such as road upgrades) and services (such as electricity); small additional investments can make a big positive impact locally, for example, if a newly-surfaced road is extended to a local market or school.
- Hours of operation of mining, night time noise and disturbance being a potential source of conflict if not addressed early in the process.
- The permitted speeds and loading of trucks visiting and leaving the mine; I was a mediator in a case in Australia where this was by far the main area of dispute, with local people being concerned about safety. In India, the dust from uncovered trucks can be a major local pollutant.
- Employment opportunities, the kind of work available and who is eligible; communities sometimes complain that they are only offered low-paid marginal work. On the other hand, mining companies may offer positions and find that nominations from the community are people least able to do mining work because the strongest and fittest are required to work in the fields.

Returning to the subject of resettlement, there is much to be learned from experiences of people resettled after the Asian Tsunami of 2004. As shown in the images below from Aceh, people from communities forced to leave their homes because the Tsunami swept away villages and much of the local land, found themselves resettled in new homes inland. They may have improved in material terms when compared to older housing on the coast. But the dislocation felt by people leaving their fishing livelihoods to live in the forest, moving from random settlement patterns along the coast road to the serried ranks of terraced housing, must have been great. In the haste required to build houses after the emergency, some houses in Sri Lanka were constructed without kitchens.



Following the Tsunami in 2004, damage to the coastline of Aceh (on the left) led to the resettlement of coastal communities to new villages constructed inland (on the right), providing a vivid illustration of the dramatic changes often experienced by people resettled due to mining operations.

Resettlement is an unknown experience for many people affected by mining operations. Improved development outcomes largely hinge on getting this part of the equation right through dialogue and discussion in which mediation plays a key role.

Conclusion; what's the benefit?

When it comes to mining and local development, skills in managing and resolving disputes are frequently under-valued. As a result, situations of conflict can escalate into the kinds of sharply polarised disputes that are increasingly common in locations where the interests of governments, mining companies and local communities collide.

Strengthening the skills and experience of all parties to mining projects is necessary if benefits to local development are to be improved and mining investments are to avoid the pattern of failings by which they are often characterised. I was once asked to organise a mediation process with the background explanation that 'we held a meeting, everyone came but it turned into a shouting match and nearly a riot'. Meetings over life-changing matters such as the local impacts of mining are anxious affairs for everyone involved in them. The knowledge required to gain the most from such meetings include the principles and practice of mediation.

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