



Human Rights Due Diligence through Stakeholder Engagement?

The Case of a Copper-Gold Mine in the Philippines

Brigitte Hamm / Anne Schax

INEF-Report
109/2015

UNIVERSITÄT
DUISBURG
ESSEN

Open-Minded

Institute for
Development
and Peace



INEF

NOTE ON THE AUTHORS:

Brigitte Hamm, Dr., is senior researcher at the Institute for Development and Peace (INEF) at the University of Duisburg-Essen, Germany. Her research focus is on business and human rights as well as Corporate Social Responsibility as a normative and governance concept. She is head of the project "Implementing the UN Guiding Principles for Business and Human Rights in Development Cooperation" which has been financed from 2012 until 2015 by the German Federal Ministry for Economic Cooperation and Development (BMZ).

Email: brigitte.hamm@inef.uni-due.de

Anne Schax, M. A., is a former researcher at the Institute for Development and Peace (INEF) and worked in the project "Implementing the UN Guiding Principles on Business and Human Rights in Development Cooperation". She currently works at CARE Deutschland-Luxemburg. Prior to this, she completed her Master of Arts in Conflict Studies and Human Rights at Utrecht University.

Contact: inef-sek@inef.uni-due.de

BIBLIOGRAPHICAL NOTE:

Hamm, Brigitte/Schax, Anne: Human Rights Due Diligence through Stakeholder Engagement? The Case of a Copper-Gold Mine in the Philippines. Duisburg: Institute for Development and Peace, University of Duisburg-Essen (INEF Report, 109/2015).



Imprint

Editor:

Institute for Development and Peace (INEF)
University of Duisburg-Essen

Logo design: Wibke Lussu

Layout design: Jeanette Schade, Sascha Werthes

Cover photo: Jochen Hippler

© Institut für Entwicklung und Frieden

Lotharstr. 53 D - 47057 Duisburg
Phone +49 (203) 379 4420 Fax +49 (203) 379 4425

E-Mail: inef-sek@inef.uni-due.de

Homepage: <http://inef.uni-due.de>

ISSN 0941-4967



Brigitte Hamm / Anne Schax

**Human Rights Due Diligence
through Stakeholder Engagement?**

The Case of a Copper-Gold Mine in the Philippines

INEF Report 109/2015

University of Duisburg-Essen
Universität Duisburg-Essen

Institute for Development and Peace
Institut für Entwicklung und Frieden (INEF)



ABSTRACT

Brigitte Hamm/Anne Schax: Human Rights Due Diligence through Stakeholder Engagement? The Case of a Copper-Gold Mine in the Philippines. Duisburg: Institute for Development and Peace, University of Duisburg-Essen (INEF Report, 109/2015).

The report examines to what extent stakeholder engagement as a form of private governance can contribute to a corporation's human rights due diligence performance. It takes as the basis for investigation a case study of a stakeholder engagement program implemented by the operating company SMI for a planned copper-gold mine in the Philippines during the project's pre-operational phase. The analysis examines criteria for good stakeholder engagement set out by the International Finance Corporation (IFC) and uses the UN Guiding Principles on Business and Human Rights as the conceptual framework. For the case investigated here, it is established that SMI's stakeholder engagement program as well as the IFC's guidelines evince several shortcomings from a human rights perspective, which in turn negatively affect other due diligence processes.

ZUSAMMENFASSUNG

Der vorliegende INEF-Report untersucht, inwieweit die Einbeziehung von Stakeholdern als ein Verfahren privater Steuerung (*Private Governance*) einen Beitrag zur menschenrechtlichen Sorgfaltspflicht eines Unternehmens leisten kann. Hierfür bildet der Fall des Stakeholder Engagement Programms des Unternehmens SMI für eine geplante Kupfer-Goldmine auf den Philippinen in der Erkundungs- und Entwicklungsphase des Projektes die Grundlage. Die Kriterien für gutes Stakeholder Engagement der International Finance Corporation (IFC) dienen als Maßstab für die Analyse und die UN-Leitprinzipien für Wirtschaft und Menschenrechte bilden den konzeptionellen Rahmen. Aus einer menschenrechtlichen Perspektive zeigt die Untersuchung, dass sowohl das Stakeholder Engagement Programm von SMI als auch die Richtlinien der IFC Schwachstellen aufweisen, die sich negativ auf den Prozess der menschenrechtlichen Sorgfaltspflicht auswirken.

Content

1. Introduction	7
2. Private Economic Governance under Conditions of Transnationalization	10
3. Governance in the Extractive Industries	14
3.1 Background Information on the Extractive Industries.....	14
3.2 Impacts of Open-pit Mining.....	15
3.3 Actors in the Governance of the Mining Sector	15
4. The Concept of Stakeholder Engagement.....	17
4.1 Stakeholder Engagement & Human Rights	18
4.1.1 The UN Guiding Principles on Business and Human Rights	19
4.2 Principles of Best Practice.....	21
4.3 Stakeholder Engagement in the Extractives Sector.....	22
4.4 Analytical Framework: Introducing the IFC Handbook.....	22
5. The Stakeholder Engagement Process for the Tampakan Copper-Gold Mine	26
5.1 The Tampakan Copper-Gold Project.....	26
5.2 Analysis of SMI's Stakeholder Engagement following the IFC's Criteria	28
5.2.1 Stakeholder Identification & Analysis.....	28
5.2.2 Providing Information to Facilitate Participation.....	30
5.2.3 Building Constructive Dialogue.....	32
5.2.4 Providing Channels for Stakeholders' Grievances	33
5.2.5 Positioning Stakeholder Engagement in the Corporation.....	34
6. Discussion of the Empirical Findings regarding SMI's Stakeholder Engagement Process	35
6.1 SMI's compliance with the IFC Handbook	36
6.2 Evaluation of the IFC Handbook from a human rights perspective	38
7. Conclusion	39

8.	References	43
9.	List of Abbreviations	48
10.	Appendix A.....	49

1. Introduction

In recent decades, the responsibility of businesses to respect human rights has been increasingly acknowledged, which is most strongly demonstrated by the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGP) by the UN Human Rights Council in 2011. The Principles set out provisions for states and corporations, which are to ensure that business enterprises fulfill their responsibilities to act with human rights due diligence. In accordance with the Principles, other international instruments, such as the Guidelines for Multinational Enterprises adopted by the Organisation for Economic Co-operation and Development (OECD) and the International Finance Corporation's (IFC) Performance Standards, have also adopted more comprehensive provisions on the responsibilities of businesses regarding human rights. Accordingly, corporations are called upon to ensure, on a voluntary basis, that their own conduct follows international standards. The approach exemplifies the trend towards private governance arrangements to regulate the global economy in light of public governance deficits.

While all businesses have a responsibility to respect human rights, civil society groups have particularly focused on certain industry sectors. The extractive sector has been under special scrutiny because of its extensive and long-term impacts, especially on the environment and affected communities (Partnership Africa Canada 2012: 13). Many human rights, such as the rights of indigenous peoples, the right to water and the right to health, are often negatively impacted by mining and drilling activities. One central approach to fostering more responsible corporate performance in the mining sector views the inclusion of stakeholders in corporate projects as a possible solution to manage human rights risks. In this paper, the mining industry is taken as a case study to reflect on opportunities and challenges of stakeholder inclusion more generally. The mining sector is chosen because of the aforementioned far-reaching human rights impacts, the prominence of stakeholder inclusion in many mining projects, and the existence of detailed instruments on stakeholder inclusion, which are applicable to mining projects and facilitate their evaluation. These instruments require that people affected by extractive projects be informed and enabled to participate in decision-making processes relating to corporate activities. Behind this lies the understanding that, firstly, stakeholders have the right to be involved in projects which affect their lives substantially. Secondly, the provision of information by corporations is intended to foster corporate accountability and lead to a more sustainable performance. Stakeholder participation has thus become a central topic when discussing the challenges of regulating enterprises. The central approach through which corporations achieve the involvement of affected people has been termed 'stakeholder engagement', which corporations also commonly resort to in the mining sector. It constitutes a form of



private governance as businesses aim to regulate their mining projects by implementing, inter alia, engagement activities.¹

In its ideal form, stakeholder engagement manifests as dialogue between the corporation and stakeholders, which should aid corporations in “[...] understanding stakeholders’ aspirations and needs” (Moir 2001: 19). As a result, stakeholder engagement should enable enterprises to respond to diverging interests or concerns and thus manage human rights risks. In this study we aim to illuminate the complex relationship between corporate human rights responsibility, private governance arrangements, and stakeholder engagement practices by investigating the following general question:

To what extent can stakeholder engagement as a form of private governance contribute to a corporation’s human rights due diligence performance?

For the purpose of this paper, human rights due diligence performance is defined as the entirety of a corporation’s processes to meet its human rights responsibility. Based on this definition, stakeholder inclusion is understood as a corporate responsibility in its own right, as established by the UNGP, and elaborated on in later chapters of this report. However, stakeholder participation is also viewed as a crucial prerequisite for other components of a corporation’s human rights due diligence process. For instance, the tasks of assessing actual and potential human rights impacts of an operation, as prescribed by the UNGP, can in most cases only be achieved in an effective and appropriate manner if stakeholders’ experiences, perceptions and opinions are incorporated into the assessment. Therefore, engaging with stakeholders is a requirement. Moreover, the extent to which an enterprise consults stakeholders and takes account of their input can illustrate the level of a corporation’s understanding of and commitment to the principles underlying its human rights responsibilities. For instance, a corporation must act in accordance with human rights, embed its commitment to its responsibility in all business functions, and refrain from treating human rights due diligence as a negligible, additional task (see United Nations 2011: Principles 13, 16). Thus, it appears that corporate stakeholder engagement fosters the fulfillment of a company’s human rights responsibility. However, these assumptions regarding the contribution of stakeholder engagement to corporate human rights due diligence have until now not been investigated in depth. This report seeks to fill this gap by analyzing a case study of a stakeholder engagement program from a human rights perspective.

In order to answer our research question, the analysis proceeds on two levels. On an empirical level, we investigate a mining company’s stakeholder engagement program. We chose a planned copper-gold mine in the Philippines – the Tampakan Copper-Gold Project operated by Sagittarius Mines, Inc. (SMI) – and examine the company’s stakeholder engagement process during the pre-operational phase of the project until November 2012. Our argumentation is based on official documents prepared by SMI, field research and interviews

¹ Stakeholder engagement can also be implemented as part of other governance arrangements. However, for the purpose of this paper the focus is on private governance.

conducted with various actors, including the company, communities possibly affected by the mine, government units, and civil society organizations at various levels. This review allows the identification of the opportunities and shortcomings of a specific case of stakeholder engagement and, accordingly, issues identified through this analysis may serve as signposts for other cases.

Several reasons inform the choice of this case study. Firstly, SMI's stakeholder engagement program is very extensive, so a rich body of data is available to us. Secondly, the planned mining project displays certain characteristics typical of operations in the extractive industries today: it is located in a remote area with a pristine landscape; the area is inhabited by indigenous communities; and it takes place in an emerging market economy – the Philippines – which is simultaneously characterized by weaknesses in the public governance structure. Accordingly, the results achieved through our investigation are to a certain degree generalizable to other, similar mining projects, as the environment in which stakeholder engagement takes place is an important factor influencing the respective program. Our case study thus constitutes the first level of investigation. The analytical framework for the examination of SMI's Stakeholder Engagement Program is provided by guidelines published by the IFC in *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (2007). The Handbook lends itself to the purpose of this study because SMI itself states that its program is consistent with the guidelines set out in the Handbook. Moreover, the IFC's standards are widely used and accepted, as the organization is a key player when it comes to setting norms for the globalized economy.

On a second, more conceptual level, we examine the underlying principles and assumptions informing stakeholder engagement – as disseminated through instruments such as the IFC Handbook – and the implications of this approach from a human rights perspective. We also provide a critical assessment of the Handbook, which is required because corporations rely on the IFC's guidance and so far, according to our knowledge, no review of the Handbook exists.

Through this process of analysis, we aim to clarify the dynamics of stakeholder engagement as a form of private governance with regard to the contribution stakeholder engagement can make to a corporation's human rights due diligence performance. We thus aim to answer the main research question introduced above, and also to shed light on further questions, namely:

Did SMI comply with the criteria set out in the IFC Handbook? Did the corporation fulfill its human rights responsibility regarding stakeholder participation?

Are the criteria set out in the IFC Handbook for stakeholder engagement processes sufficient from a human rights perspective?

The paper proceeds as follows: In *Chapter 2* we first discuss the role of private governance in the global economy and the relevance of stakeholder inclusion in this context. Relevant features of the extractive sector are introduced in *Chapter 3*. *Chapter 4* sets out the characteristics and premises of stakeholder engagement as well as the analytical framework for this paper. Against this background, in



Chapter 5, we analyze how SMI has realized stakeholder engagement during the pre-operational phase of the Tampakan Copper-Gold Project in accordance with the IFC Handbook. *Chapter 6* discusses the results obtained from the preceding analysis and employs a human rights lens to assess the quality of SMI's stakeholder engagement and the IFC's guidance. In *Chapter 7* we offer our main conclusions.

It is concluded that on both levels of analysis the concept of stakeholder engagement shows several shortcomings from a human rights perspective. Although SMI implemented a very extensive stakeholder engagement program, it often failed to observe the substance of the IFC's guidance, and this impeded the establishment of a mutual exchange between corporation and stakeholders. Moving beyond the case study, we observe on a conceptual level that the approach informing stakeholder engagement as set out by the IFC, namely the predefined goal of reaching consent for an operation, the top-down approach to *manage* stakeholders and the failure to prioritize the human rights of affected people, leads to a form of stakeholder engagement which is insufficient from a human rights perspective. This in turn means that a central task which corporations are to fulfill in order to meet their corporate responsibility for human rights is not accomplished. Moreover, other aspects of human rights due diligence which depend on stakeholder participation, such as the assessment of project impacts, are also likely to be negatively affected. Thus, the current prevalent understanding of stakeholder engagement diminishes the extent to which such programs could contribute to the fulfillment of the corporate responsibility for human rights. A shift towards a human rights-centered approach is required to enable participation and to prioritize the rights of affected people. Following from these shortcomings of stakeholder engagement as a form of private governance, we take the analysis one step further in *Chapter 7*. We ask if private governance can ensure corporate human rights due diligence or if other forms of regulation are required. While this paper only focuses on one case of stakeholder engagement and further research is required to consolidate our findings, the richness of the case study and the accompanying review of a comprehensive and recognized instrument offer a sound basis for our analysis and a starting point for further investigations.

2. Private Economic Governance under Conditions of Transnationalization

The current chapter discusses the concept of private governance as the context for the stakeholder engagement approach. For this purpose, private governance and its growing role in the regulation of the global economy will be covered first. Secondly, as the concept of stakeholder engagement approach is related to the understanding of a responsible conduct of businesses, corporate social responsibility (CSR) will be briefly introduced.

Although there is no standard definition, governance in a general sense may be understood as “[...] referring to formulating, promulgating, implementing and/or enforcing societally relevant rules (binding or voluntary ones) by government, business and/or societal actors, whereby the rules can apply to others

or to themselves” (Steurer 2013: 388). The notion of private governance focuses on the activities of private actors – predominantly from the business sector, but also from civil society.

Private governance has gained ground due to a lack of comprehensive or binding global regulation of the world economy (Mayer/Gereffi 2010). While the trade and investment regimes are based on strong and binding international regulations, including sanction mechanisms, public governance has been weak when it comes to social and environmental challenges arising in corporate activities, such as labor standards and sustainable development. In these seemingly ‘soft’ fields, one important solution to governance deficits has been to transfer responsibility to the companies themselves. Thus, transnational corporations (TNCs) play an increasingly important role in the attempt to integrate labor and human rights as well as environmental standards into transnational economic activities. In order to support these efforts and also to give appropriate guidance, various international actors – above all the World Bank and the IFC – have taken a range of initiatives.

Various explanations of the emergence and increasing relevance of private governance have been put forward, depending on the theoretical lens. From a global governance perspective, deficits in public governance are emphasized and predominantly linked to changes in statehood. Traditionally, state functions such as the regulation of the economy and the provision of public goods have been designed and organized within the national territory. Such hierarchical ‘command and control’ regulation was dominant in the 1960s and 1970s (Utting 2002). Jan Aart Scholte (2005) sees a move away from statism with a repositioning of the state. “As firms, production networks, and markets transcended national boundaries, public (governmental) systems of economic governance built on the unit of the nation-state proved inadequate for regulating an increasingly fragmented footloose global economy.” (Mayer/Gereffi 2010: 1) As Karl Polanyi (1957) has described, we thus experience a further disembedding of the market from societal institutions. Instead, diverse modes of global governance, including private governance, have been enhanced to deal with transnationalization processes. An example of global governance with an emphasis on private governance is the UN Global Compact. However, the efficiency of such mechanisms is doubted. John G. Ruggie (2014) explains weaknesses in global governance capacities with further fragmentation due to transnationalization as well as stagnation within the existing global governance architecture and negotiating mechanisms. According to Ruggie, one reason for this is that the OECD countries no longer have the sole authority to define appropriate solutions. “There may be individual instances of network governance, multi-level governance, private governance, multi-stakeholder initiatives, and even experimentalist governance. But the ideal solution of comprehensive and integrated regimes [...] is increasingly unattainable [...]” (Ruggie 2014: 6) From Ruggie’s point of view a patchwork of approaches is appropriate to deal with this situation.





By contrast, rather than focusing on (widening) governance gaps, a critical political economy perspective underlines the leverage and power of TNCs (e. g. Haufler 2003; Vogel 2010; Utting 2005; Steurer 2013; Albareda 2008).² From this point of view, the growing importance of private governance is an outcome of corporate influence, for example through lobbying, and governments' preferences. This implies that regulatory policies are shaped in accordance with the demands of the neoliberal course of globalization, namely privatization, deregulation and flexibilization. Increasingly, TNCs are perceived of as holding political authority. In this context, authority is defined as "[...] decision-making power over a particular issue area" (Cutler et al. 1999: 5), whereby that power is exercised legitimately, either because of its authorization by the government or due to the special expertise or the historical role of the respective business actor (Cutler et al. 1999). The view of businesses having legitimate political authority not only reshapes the role of public and private actors (Steurer 2013: 391), but also underlines the relevance of private governance.

The shift towards corporate self-regulation as the dominant mode of private governance during the 1970s and 1980s was increasingly challenged in the 1990s by opponents of the neoliberal course of globalization, who questioned the legitimacy of this mode of governance. For example, one major criticism referred to the lack of independent monitoring of corporate self-regulation in the context of labor-intensive supply chains. Corporate initiatives were seen as a public relations or window-dressing exercise (Utting 2002). In reaction to this and also in order to avoid prospective binding regulation for the global economy, representatives of the private sector called on enterprises to commit to CSR, which included voluntary acceptance of a responsibility for social and environmental standards. As a consequence, a veritable CSR movement in the private sector emerged, which, due to the emphasis on voluntariness, follows neoliberal principles. In this context, the United Nations Conference on Environment and Development (UNCED), the 'Earth Summit', in Rio is seen as a turning point in the shaping of corporate self-regulation and also as an attempt to strengthen the legitimacy of such regulation through the emphasis on co-regulation and CSR (e. g. Haufler 2003).

In respect to private governance, the distinction between sole corporate self-regulation and co-regulation has to be made, which is relevant for the discussion of stakeholder engagement. Definitions of co-regulation vary. Peter Utting (2005) and many other authors perceive co-regulation as private-private governance between business and civil society actors. Like David Vogel (2006), Utting also characterizes this as civil regulation. Overall, one may accept Steurer's definition of co-regulation as "[...] an umbrella term for co-operative forms of steering in which actors from different societal domains aim to achieve common objectives or supply public services jointly. One key feature of co-regulation is that respective practices join not only regulators from different

² Some nongovernmental organizations (NGOs), such as Friends of the Earth (FOE), describe the business influence on global regulation as corporate capture; <http://www.foei.org/what-we-do/corporate-capture-explained/> (04/03/2015).



domains but oftentimes also those who are regulated and/or the beneficiaries of the regulation.” (Steurer 2013: 397)

In the course of strengthening and scaling up CSR initiatives, various types of civil regulation have emerged. Today, “[...] CSR-related institutions at the global level” (Brammer et al. 2012: 15) shape the practices and policies of transnational and local corporations. We thus encounter transnational and global institutions with private, semi-private and public regulation as well as standards or voluntary commitments, such as the Global Compact and the International Organization for Standardization (ISO) 26000.

An essential component of CSR is the inclusion of stakeholder, which may take a variety of forms, e. g. stakeholder engagement or multi-stakeholder initiatives. Stakeholder inclusion as a central aspect of CSR began to be accepted as early as 1998, as the publication of the IFC’s manual *Doing Better Business Through Effective Public Consultation and Disclosure (1998)* illustrates. Underlying this approach is the claim of enterprises that they not only consider the interests of shareholders, but also address the interests of their stakeholders. From a CSR perspective, stakeholder inclusion increases the legitimacy of private governance as it aims to obtain consent from people affected and thus provides a social license to operate.

Beyond positive reception and good intentions, concerns have also been raised. Thus, Blowfield and Frynas (2005) recognize a business logic underlying such endeavors, pointing to business-centered stakeholder theories in this context, such as those developed by Freeman and Reed: “If this task of stakeholder management is done properly, much of the air is let out of critics who argue that the corporation must be democratized in terms of increased direct citizen participation” (Freeman /Reed 1983: 96, in: Blowfield/Frynas 2005: 509). Following this statement, stakeholder inclusion is to be seen as a pre-emptive move to calm possible protesters and even to prevent more far-reaching reforms. Such a view supports the criticism that stakeholder inclusion is implemented in a one-sided manner in the interests of business. A major concern expressed in this context refers to the selection of stakeholders, which is perceived as being more or less at the discretion of the company involved in a project. The power asymmetry that comes to the fore here is also a concern for Blowfield and Frynas (2005: 508).³

Despite this criticism, CSR has become an integral component of private governance across all economic sectors. It has also been taken up by corporations active in the extractives sector and thus constitutes one factor that determines the modes of governance prevalent in the mining industry. As background to the case study in this report, we introduce the main characteristics of governance in the mining sector in the next chapter.

³ Stakeholder engagement programs have to be distinguished from multi-stakeholder initiatives. The latter pool “[...] the expertise, skills and finance of non-profit and for-profit organizations [...]” (Fransen 2012: 166), and are highly commended by the UN, corporations and national governments as an adequate mode of governance to deal with global challenges. As prominent arrangements for civil regulation, they gained relevance in number and scope during the late 1990s.



3. Governance in the Extractive Industries

As has been discussed in the previous chapter, private governance has become more and more linked to international environmental, social and human rights standards. Because of its large-scale impacts, the governance of the extractive sector has been under special scrutiny by critical civil society organizations and the media for many years.

For a better understanding of the sector's relevance and the subsequent case study, this chapter firstly introduces some historical aspects and relevant data reflecting the significance of extractive industries in the global economy. Secondly, human rights-related problems typical of the sector will be highlighted. And finally, the role of national, international and transnational actors dealing with these challenges will be discussed. In this context, emphasis will be on the World Bank and the IFC, a member of the World Bank Group and the largest global development institution focused exclusively on the private sector in developing countries.

3.1 Background Information on the Extractive Industries

'Extractive industry' is an umbrella term for any processes that involve the extraction of raw materials from the earth. Extractive processes refer to oil and gas extraction, mining, dredging and quarrying.⁴ Due to the growing demand for mineral resources in OECD and emerging market countries, the extraction of raw materials has been increasing for many years. In addition to coal, oil and gas, the demand for other raw materials such as gold, bauxite, cobalt, copper and rare earths has also risen dramatically. While the use of resources and raw materials has become more efficient, overall resource consumption is still increasing, and global resource extraction has grown more or less steadily over the past 25 years, from 40 billion tonnes in 1980 to 58 billion tonnes in 2005, representing an aggregated growth rate of 45% (FOE et al. 2009: 10).

Historically, industrial extraction has been an important motor of industrialization during the 19th century in Europe and Northern America. However, due to the globalization of the extractive sector and a corresponding decline of prices for raw materials, the competitiveness of mining in industrial countries on the world market decreased. Furthermore, deposits in the new mining countries often lay quite close to the surface, which allowed the use of the cheaper open-pit mining method. Open-pit mining "[...] can be defined as the process of excavating any near-surface ore deposit by means of an excavation or cut made at the surface [...] dumping overburden and tailings at a dedicated deposal site [...]. As of 2008, there were approximately 2,500 industrial-scale open-pit metal mines in the world, which is approximately 52% of all industrial-scale mining operations." (Wetherelt/ Wielen 2011: 857)

⁴ <http://www.businessdictionary.com/definition/extractive-industry.html> (12/5/2014)



At the political level, the process of relocation was enhanced by the World Bank's Structural Adjustment Programs (SAPs), which further opened the extractives sector in countries of the global south to privatization and to Foreign Direct Investments (FDIs) aimed at accelerating economic growth (Dashwood 2012). This shift is reflected in the fact that in 2012, only three Western industrial states - Australia, Canada and the USA – featured among the 20 largest mining countries (ICMM 2014: 14).

3.2 Impacts of Open-pit Mining

As mentioned above, open-pit mining is frequently resorted to, particularly outside the Western industrialized countries. However, because of its severe environmental footprint and accompanying negative influence on the human rights of people affected, the method has been fiercely criticized. The conditions and impacts of large-scale open-pit mining projects follow a uniform pattern: The sites are often located in remote, underdeveloped regions mainly inhabited by indigenous communities and small-scale farmers. Mining activities bring tremendous changes for the affected communities, including many promises of development through the mining projects. However, most effects are negative, due to environmental degradation. Above all, water and air pollution have a negative impact on affected communities' human rights, including the rights to health and to an adequate standard of living. Moreover, labor rights in the mines are often restricted or even denied, especially to non-permanent workers.

As a result, public protests against large-scale mining projects and supportive government policies have increased in both number and intensity. In some cases this has led to confrontations between police and protesters, and also to the shooting of civilians by police and military. A prominent and enduring example is the Ogoni communities' protest against oil extraction on their territory in Nigeria, which Shell started back in the 1950s. Violent conflicts are also reported in the context of SMI's Tampakan mining project, which is discussed in this report.

3.3 Actors in the Governance of the Mining Sector

In the following, we briefly present the most relevant actors and their functions in the governance of the extractives sector in general and the case under investigation in particular. They include communities, workers and companies, governmental authorities, as well as international and transnational actors.

First of all, there are the people who are more or less directly affected by extractive activities. As already mentioned, in many projects they include, first and foremost, smallholder farmers, indigenous communities and mine workers. They are often in a weak negotiating position vis-à-vis transnational mining companies. In order to support these people in their efforts to defend their interests and to protect the ecosystems, civil society actors in production, buyer and consumer countries often collaborate. They seek to influence public officials and mining practices, to ensure that international standards are met. These transnational networks are described by Keck and Sikkink (1998) as 'activists beyond borders'. With the aim of supporting and organizing protest against



SMI's Tampakan mining project, local and national networks, for example the Tampakan Forum, are supported by transnational human rights organizations such as the International Federation for Human Rights (FIDH) and the German Catholic Bishops' Organization for Development Cooperation (Misereor).

At the corporate level, we encounter networking as well: In the early 1990s, major mining companies, predominantly from OECD countries such as Canada, the United States, Australia, Japan and Switzerland, focused on intra-sector collaboration and founded the International Council on Mining and the Environment, which was converted to the International Council on Mining and Metals (ICMM) in 2001. Key tasks of this business association include lobbying and promoting the voluntary commitment to sustainable development and self-regulation (Dashwood 2012: 465). According to Dashwood (2012), the most important initiative launched by the ICMM is the Sustainable Development Framework, which includes reporting standards and external control of the framework's implementation. SMI has committed itself to this agreement.

At the national level, governments of resource-rich countries have a strong interest in attracting FDIs for mining. They expect high incomes from resource extraction, which are to contribute to their country's overall national development. Often, these governments passed national laws to regulate the sector during the 1990s in the context of the SAPs, which generally favor foreign investors. They frequently neglect the protection of the environment and the rights of people affected by mining, especially indigenous communities, which fosters conflict. Such legal weakness exists in spite of the fact that today most governments request that companies conduct an evaluation of environmental and social risks of their operations, usually in the form of Environmental Impact Assessments (EIAs) and Environmental and Social Impact Assessments (ESIAs). In many resource-rich countries, the consequent implementation of national laws is weak. Furthermore, weak governance structures are often responsible for or contribute to human rights violations in the context of extractive projects: Companies may get involved in local conflicts, corruption may occur or authoritarian governments may react aggressively to criticism from local communities in the context of extractive sector activities (ECOSOC 2005: 4).

In addition to the people affected, companies and governments of producer countries, we encounter a multitude of international actors engaged in the mining sector.⁵ Most important are the activities of the World Bank Group, which conducts a variety of tasks, such as financing projects, designing, supervising and organizing governance structures, and promoting norms and standards for the sector.⁶ The World Bank Group provided a total of US\$ 695 million for ma-

⁵ An example is the *EU Raw Materials Initiative – meeting our critical needs for growth and jobs in Europe of 2008*; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0699:FIN:en:PDF> (18/06/2015).

⁶ At present the World Bank Safeguard Policies are being reviewed with the aim of better integrating human rights into these so-called Safeguards. This tool serves inter alia as a benchmark for export credit guarantees.



for extractive industries projects in the 2012 financial year, with an increase to US\$ 1,329 million in 2013. Various branches of the Bank are involved in designing governance structures: The main task of the World Bank's Oil, Gas and Mining Division is to advise and assist governments politically, technically and legally in the transparent and sustainable management of oil, gas and solid mineral resources in order to maximize development gains and poverty reduction (World Bank 2009). The World Bank Institute manages the Governance for Extractive Industries Program, and extractive industries are also considered within the Poverty Reduction and Economic Management Division.

The IFC is involved not only in the financing of projects related to mining but also plays a prominent role in norm setting. Handbooks on specific matters such as stakeholder engagement, the IFC Performance Standards and the IFC's active involvement in the elaboration of the UNGP should be mentioned here. The latter form the basis for a comprehensive reform of the IFC Performance Standards.⁷ However, many civil society organizations have criticized the fact that the inclusion of human rights still does not go far enough in the IFC Performance Standards.

4. The Concept of Stakeholder Engagement

The concept of corporate stakeholder engagement has evolved from the idea that non-financial stakeholders should somehow be addressed by a corporation to the understanding that stakeholders and corporations should build lasting relationships for the mutual benefit of both parties (White 2006: 7). In principle, stakeholder engagement is conceptualized as a mutual exchange between a corporation and those members of society who 'have a stake' in its operations. They can include groups which are directly or indirectly affected by a project or perceive themselves to be affected, as well as persons who have an interest in a project or may be able to influence its outcome. Ideally, engaging with these groups means not only informing them about the project but also taking their views into account in project planning and implementation and doing so continuously throughout the project's life-cycle. This can also have multiple benefits from a business perspective, such as legitimizing corporate activities, minimizing reputational risks, and solving problems at an early stage. Corporate stakeholder engagement thus exemplifies the phenomenon introduced in *Chapter 2* whereby private enterprises are relied upon to regulate their own behavior in a world economy in which public governance structures often fall short.

The interest in and the emphasis on the importance of stakeholder engagement have increased in recent decades, largely due to civil society groups, which have continuously pressured large corporations and national and international governing bodies to recognize that stakeholders have a right to participate in corporate projects affecting their lives. Including stakeholders in the different stages of a business operation is now increasingly recognized as a

⁷ Revised IFC Performance Standards: http://www.ifc.org/wps/wcm/connect/fca42a0049800aaaaba2fb336b93d75f/Board-Paper-IFC_SustainabilityFramework-2012.pdf?MOD=AJPERES



crucial part of corporate accountability since the dialogue with stakeholders and the information provided oblige corporations to publicly justify their actions. Moreover, as hinted at in the *Introduction*, stakeholder engagement is accepted as one important contribution through which corporations can and should fulfill their responsibility for human rights as set out in the UNGP. A frequently employed argument for the importance of stakeholder inclusion holds that this corporate responsibility derives from international human rights standards, which motivates the human rights perspective adopted in this study. This basis for stakeholder engagement is briefly discussed below.

4.1 Stakeholder Engagement & Human Rights

The normative background for stakeholders' entitlement to be included in corporate projects affecting their lives can be traced back to the International Bill of Human Rights⁸, which is based on the understanding of human rights as a means of empowerment and self-determination. This is illustrated by the interpretive guide for the corporate responsibility to respect human rights published by the UN Office of the High Commissioner for Human Rights (OHCHR), which argues that the importance of stakeholder engagement can be derived from the fundamental right of every human being to live a life in dignity. The guide states that "[h]uman rights due diligence is about people. It reflects the entitlement of every human being to be treated with dignity. It therefore involves relationships— between an enterprise and those on whom it may have an impact. Hence, the key to human rights due diligence is the need to understand the perspective of potentially affected individuals and groups" (United Nations 2012: 33). Since this, in turn, necessitates stakeholder engagement, the OHCHR argues that such activities and programs are an integral part of a corporation's human rights due diligence. This progressive understanding of participation is not yet explicitly reflected in international human rights treaties. It can, however, be implicitly derived from Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR), which states that "[e]very citizen shall have the right and the opportunity [...] [t]o take part in the conduct of public affairs" (UN General Assembly 1966a). Following the understanding of participation presented by the OHCHR and taking into account that many corporate operations often affect the public interest, for example a community's water supply, it may be concluded that stakeholders have a right to be included in corporate projects affecting them (see Dupuy 2014; Hamm et al. 2013; Lockie et al. 2009).

The view that corporations have a responsibility to engage with their stakeholders or wider society when their projects have impacts on the general public has, in a limited way, also been taken up in international regulation. For instance, the United Nations Economic Commission for Europe (UNECE) *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), adopted in 1998, calls on states to "[...] encourage operators whose activities have a significant impact on

⁸ The International Bill of Human Rights comprises the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966a) and the International Covenant on Economic, Social and Cultural Rights (1966b).

the environment to inform the public regularly of the environmental impact of their activities and products” (Article 5(6)).

Furthermore, certain groups have more far-reaching rights regarding participation in projects affecting them. Thus, the *United Nations Declaration on the Rights of Indigenous Peoples* stipulates that the free, prior and informed consent (FPIC) of indigenous groups is required when operations affect their territories. This provision holds, inter alia, when their cultural, intellectual, religious or spiritual property is taken (Article 11(2)), when legislative or administrative measures affect them (Article 19) or before indigenous communities can be resettled (Article 2) (United Nations 2008). These provisions often apply to extractive projects since they frequently operate in areas inhabited by indigenous communities; they are therefore relevant to our case study. Thus, the demands put forward regarding the involvement and participation of stakeholders in corporate projects reflect an international standard derived from the evolving understanding of the relevance of human rights in a globalized economy. The most far-reaching, although not legally binding, instrument in this regard is the UNGP, which we briefly introduce below.

4.1.1 The UN Guiding Principles on Business and Human Rights

The UNGP are the outcome of a joint endeavor between governments, businesses, civil society organizations and academics under the leadership of the UN. The UNGP were unanimously endorsed by the UN Human Rights Council in June 2011 and are based on the Policy Framework ‘Protect, Respect, Remedy’ (UNHRC 2008) by John Ruggie, formerly the UN Secretary-General’s Special Representative on Business and Human Rights. Ruggie’s aim was to reflect “[...] the complexities and dynamics of globalization [...] and] to reduce or compensate for the governance gaps created by globalization, because they permit corporate-related human rights harm to occur even where none may be intended” (UNHRC 2008: 5). The UNGP encompass the three pillars of the Policy Framework:

- I. The state duty to protect specifies the duties of governments to enforce human rights under the conditions of globalization. This includes ensuring that human rights are respected in all business activities.
- II. The corporate responsibility to respect human rights stipulates that businesses are to avoid abuses of human rights in their corporate activities and to prevent or mitigate negative human rights impacts linked to their operations. To fulfill these demands, corporations are to act with human rights due diligence.
- III. Access to remedy calls on states, as well as businesses, to ensure that victims of human rights violations or abuses have access to state- and corporate-level remedial mechanisms. Accordingly, the third pillar envisages the creation and strengthening of appropriate judicial and non-judicial structures, partly also in the form of private governance institutions.

Since we focus on the human rights responsibility of a private enterprise and its conduct regarding this responsibility in our case study, the provisions of the



UNGP under the second pillar are most relevant here. The second pillar, the corporate responsibility to respect *all* human rights, has a bearing on established institutions of private governance in the context of CSR, such as codes of conduct and multi-stakeholder initiatives. As explained above, while CSR is based on internationally recognized standards, related activities are in principle at the discretion of corporations. In contrast, the responsibility of business to act with human rights due diligence as laid down in the UNGP is – at least in principle – less optional. It not only has a strong normative foundation based on internationally recognized human rights, but has also been defined more precisely in the UNGP.

Thus, the second pillar of the UNGP requires corporations to establish a political commitment to respect human rights and to implement a human rights due diligence process at all levels of business activity. This demand includes three main steps: firstly, corporations should assess the human rights context as well as actual and potential human rights impacts caused by or linked to their operations; secondly, they should take appropriate action to mitigate or prevent potential negative impacts and remediate actual impacts; and, thirdly, enterprises should report externally on these impacts and on the steps taken to address them (United Nations 2011: Principles 17-21).

Thereby the extent of a corporation's human rights responsibility depends on the leverage an enterprise can exert regarding adverse impacts connected to its operations. Leverage is defined as “[...] the ability to effect change in the wrongful practices of an entity that causes a harm” (United Nations 2011: Principle 19). The concept of leverage illustrates that the UNGP recognize that an enterprise has a variety of measures at its disposal to bring about changes regarding human rights impacts it has not actively caused.

While the UNGP have been criticized above all because of their alignment with CSR in the second pillar and their impreciseness in respect to implementation, they constitute a particularly important document for this report as they also emphasize the centrality of stakeholder inclusion. In several key passages, the UNGP call on enterprises to consult with stakeholders throughout a project's lifecycle to achieve more corporate accountability. Consultations should take place for the assessment of potential human rights risks of an operation, for the tracking of a company's responses, for the communication of how human rights impacts are addressed and for the design of project-level grievance mechanisms (United Nations 2011: Principles 18, 20, 21, 31). However, the UNGP do not specify in detail what such consultations should entail. Principles 18 and 31 provide some hints, pointing out that engagement with stakeholders should be “meaningful” (United Nations 2011: Principle 19). More precisely, enterprises should “[...] seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement” (United Nations 2011: Principle 20), and solve possible grievances through dialogue (United Nations 2011: Principle 34). Accordingly, the UNGP emphasize that consultation should be a two-way street, a mutual exchange between all parties. It is stressed that stakeholder input should be incorporated into the respective corporate processes. Overall, stakeholder engagement is understood as a prerequisite for other due diligence endeavors. These points are highly relevant to the

case examined in this paper since the UNGP provide an internationally accepted point of reference for good corporate conduct. Moreover, SMI as the company in question is also committed to the UNGP, which reinforces their suitability as a benchmark for the present analysis.

Following the UNGP, other international instruments have also incorporated provisions geared at involving stakeholders in corporate projects, such as the OECD Principles of Corporate Governance, the OECD Guidelines for Multinational Enterprises, the IFC Performance Standards, and to a limited extent the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. All instruments view stakeholder engagement as an integral part of good business conduct to manage possible social and environmental impacts successfully from both a corporate and a stakeholder perspective.

4.2 Principles of Best Practice

Several principles of best practice can be summarized from the aforementioned instruments. The underlying assumption is that adherence to these normative principles creates stakeholder engagement programs which are legitimate and achieve responsible business conduct. These principles are the following: Firstly, stakeholder engagement should always be a *two-way* endeavor (OECD 2011: 25). This entails a dialogue in which both parties participate in equal measure and stakeholder input is sufficiently considered within the corporation (IFC 2012: 8). Secondly, stakeholder engagement should be *ongoing* (ibid.: 8) throughout the project's lifecycle. Thirdly, programs are to be *appropriate* (ibid.: 7-8) and *constructive* (OECD 2013: 101), which means they have to be suitable for the stakeholders, based on their preferences. For instance, programs should consider which language(s) stakeholders prefer to communicate in, how dialogue is usually structured in stakeholder groups, and when stakeholders may not be available due to other duties and commitments, e.g. during harvest season. Fourthly, to ensure that stakeholder engagement has credibility within the corporation, it should be treated "[...] like any other business function" (IFC 2007: 8), and be *integrated* into the corporate structure. Lastly, the process should be conducted '*in good faith*' (OECD 2011: 25), meaning that it should be "an honest and sincere effort" (Dawkins 2013: 4) by both sides.

It should be borne in mind, however, that these principles constitute ideal standards set out by international organizations. Simultaneously, they also exhibit several shortcomings: Firstly, there is a lack of generally accepted benchmarks that could be employed to assess the extent of the principles' fulfillment in a specific program. Terms such as 'meaningful', 'in good faith' and 'effective' are predominantly used to describe the characteristics of good stakeholder engagement, as is the case in the UNGP; however, they are not defined further. Secondly, the set-up of stakeholder engagement programs as undertakings controlled by the corporation calls into question whether a dialogue between stakeholders and a company can take place at eye level, a point elaborated on below. Nevertheless, these characteristics of *good* stakeholder engagement provide a point of reference for corporations and civil society in order to gauge



whether a specific program can be considered a successful instance of private governance.

4.3 Stakeholder Engagement in the Extractives Sector

The focus on the ideal characteristics of stakeholder engagement has been paralleled by rising attention paid to the actual performance of corporations in their implementation of stakeholder engagement programs as an aspect of a corporation's due diligence process (Shift 2013: 5). The extractive industry has attracted particular attention due to the significant risk that it will adversely affect human rights, making stakeholder engagement all the more important (see *Chapter 3.2*).

The special nature of the extractive industry is also illustrated by the fact that "[...] poor stakeholder engagement is cited as an important issue in a large proportion of case studies about the conflicts between local communities and the extractive industry" (ibid.: 8). The stakeholder programs themselves have, consequently, become a matter of dispute, which exemplifies the great importance they hold for those affected by extractive operations.

There are multiple reasons why such conflicts arise. Dawkins argues that through stakeholder engagement programs, enterprises may be "[...] appropriating the moral legitimacy of the stakeholder rubric while escaping accountability regarding the extent to which stakeholder input is ever binding" (Dawkins 2013: 1). This dilemma may become even more protracted because stakeholders often lack the capacities to "[...] sanction or modify activities that affect them" (ibid.: 3) and cannot evade the impacts of a corporate project. The existing power asymmetry also enables corporations to sidestep stakeholder input completely. At the farthest end of the spectrum, this means that while stakeholders may call for a complete halt to a project, the stakeholder engagement approach, as set out in the international instruments introduced above, does not include the stipulation that the corporation must comply with this request. Thus, the unequal distribution of power also constitutes an inherent flaw in the concept of stakeholder engagement. This also indicates that the international instruments follow the business perspective in their approach to stakeholder engagement.

4.4 Analytical Framework: Introducing the IFC Handbook

Multiple tools and guidelines have been developed in order to assist corporations in designing and implementing high quality stakeholder engagement programs, many of which are also highly relevant to, or specifically designed for, the extractives sector (cf. *Appendix A*). Since these guides set out steps for the implementation of stakeholder programs, they also constitute useful frameworks to analyze the performance of corporations in retrospect. This is what this paper sets out to do for SMI's Tampakan Copper-Gold Project in the Philippines. The main guide chosen to aid in the evaluation is the IFC's *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (IFC 2007), which we introduce in this section. More detailed information regarding the specific analytical process followed in this report is provided in the next chapter.



Several reasons inform the choice of this Handbook⁹ as an evaluative tool for the present case study: Firstly, the Handbook focuses mainly on “stakeholder groups ‘external’ to the core operation of the business, such as affected communities, local government authorities, non-governmental and other civil society organizations [...]” (IFC 2007: 3). Since SMI’s stakeholder engagement program was mainly directed at the potentially affected local communities, the IFC Handbook is uniquely suitable to assess the process.

Secondly, the Handbook is directed at business. SMI itself states that it follows this Handbook in order to “[...] be consistent with recognized international best practice” (Hansen Bailey 2011: 63). Accordingly, we analyze if the corporation adheres to the standards it set for itself. Simultaneously, this allows us to investigate how attainable the standards set by the Handbook are for corporations and how a program shaped by this guidance affects a corporation’s human rights due diligence performance.

Although the Handbook lends itself to the evaluation of the present case, it is informed by an understanding of responsible corporate conduct which itself has to be scrutinized. It adopts a business perspective; in other words, it was created to aid corporations in achieving their objectives. Hence, the presumption underlying the Handbook is that through stakeholder engagement, consent for a project can be reached in the end. The adoption of the business perspective also results in the exclusion of other actors possibly vital to the success of a stakeholder engagement program. For instance, the role of the state in establishing and enforcing the legal framework and ensuring that within its territory the human rights of its constituents are not violated through corporate projects is not a subject of discussion in the Handbook. Thus it is important to keep in mind that the use of the Handbook for the evaluation does not mean that we align ourselves with its underlying reasoning. Instead, our analysis allows us to determine whether following the guidance is sufficient to create a stakeholder engagement program that contributes to a corporation’s responsibility to respect human rights. The evaluation of the Handbook itself is all the more important because it has not received much attention from actors other than private enterprises, such as civil society organizations. Accordingly, as far as could be established, no critical review of the IFC Handbook exists – a gap this INEF Report sets out to fill in its discussion in *Chapter 6*.

The IFC Handbook constitutes an update to the manual “*Doing Better Business through Effective Consultation and Disclosure*”, published in 1998, and reflects the increasing expectations towards stakeholder engagement programs. Following the “[...] centrality of stakeholder engagement to all other aspects of environmental and social performance [...]” (IFC 2007: 1), the IFC draws on its own

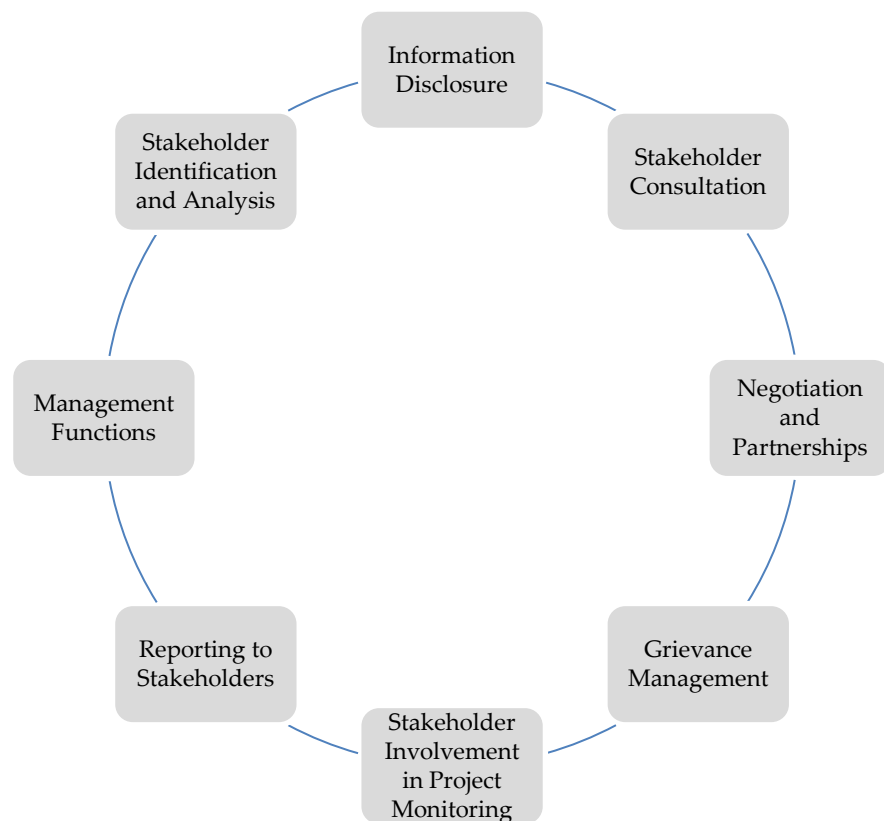
⁹ In 2014 the IFC also published “*A Strategic Approach to Early Stakeholder Engagement – A Good Practice Handbook for Junior Companies in the Extractive Industries*”, which aims to provide junior companies with comprehensive and strategic guidance on how to best establish and manage relationships with stakeholders, particularly during the phases of exploration and early project development. While the industry and timeframe of this handbook make it a relevant tool for the present analysis, the intended audience and the type of guidance provided are not suitable for this case.



learning and experiences to provide its clients and wider audience with guidance regarding the management of stakeholder relationships. It aims to translate accepted criteria of good practice – as summarized above – into specific guidance for corporations. The Handbook is a comprehensive guide, which views stakeholder engagement as a continuous process, aimed at building “[...] constructive working relationships” (ibid.: 2) in an inclusive manner. It states that businesses have a social responsibility which mandates that they engage with society. Also, the Handbook recognizes that poor stakeholder relations pose a reputational risk for corporations, which provides a further incentive to companies to engage with their stakeholders.

The Handbook is divided into two parts: the first introduces eight central components, which the IFC terms the “building blocks” (ibid.: 11) of stakeholder engagement. For each component, the underlying concepts and principles to be considered and advice regarding tested practices or supportive tools are presented. Figure 1 shows the eight components as conceptualized by the IFC, namely as a continuous process to be followed throughout a project’s lifecycle.

Figure 1: Process of Stakeholder Engagement



(adapted from IFC 2007: 12)

While the main instructions given by the IFC for the implementation of each step are provided in more detail in the following chapter, Table 1 offers a brief overview of the central steps involved:



Table 1: Central Steps of Stakeholder Engagement

Component	Central steps
Stakeholder Identification and Analysis	Identification and prioritization of stakeholders and assessment of their interests and concerns.
Information Disclosure	Communication of information to stakeholders early in the decision-making process and throughout the project's life in ways that are meaningful and accessible.
Stakeholder Consultation	Implementation of an interactive, two-way process of communication, which is well planned, inclusive and context-specific, flexible, well documented and includes follow-ups.
Negotiation and Partnerships	Conduct of negotiations in good faith on controversial and complex issues to satisfy the interests of all parties. Formation of strategic partnerships (joint activities and collaborative efforts) with, for instance, communities, government and NGOs, to achieve common objectives.
Grievance Management	Establishment of accessible and responsive means for stakeholders to raise concerns and grievances about the project throughout its life.
Stakeholder Involvement in Project Monitoring	Direct involvement of affected stakeholders in the monitoring of project impacts, mitigation and benefits. Involvement of external monitors to enhance transparency and credibility.
Reporting to Stakeholders	Reporting back to all stakeholders on environmental, social and economic performance in an accessible and appropriate way.
Management Functions	Building and maintenance of sufficient capacities within the company to manage processes of stakeholder engagement, track commitments, and report on progress.

(adapted from IFC 2007: 12)

The first part of the Handbook also incorporates advice on very sensitive issues, such as the consultation of indigenous communities. Furthermore, reference is made to a variety of other guidelines and regulations, such as the IFC Performance Standards and International Labour Organization's (ILO) Convention 169 on Indigenous and Tribal Peoples, and their respective importance for specific elements of a stakeholder engagement program is pointed out.

The second part applies the main concepts and principles introduced in the first section to the different phases of a project's lifecycle, elaborates on the particularities of each stage, and describes how stakeholder engagement programs should be reshaped throughout the cycle. The guide generally remains quite open on the exact manner in which companies are to implement their respective programs, pointing to the crucial argument that the actual design of stakeholder engagement programs varies according to a project's context or the specific characteristics of the respective corporation. In the following, we investigate how SMI applied this guidance to the Tampakan Copper-Gold Project.



5. The Stakeholder Engagement Process for the Tampakan Copper-Gold Mine

In this chapter we analyze the process of stakeholder engagement undertaken by SMI during the pre-operational phase of the Tampakan Copper-Gold Project until November 2012. As set out in the *Introduction*, this case lends itself to an analysis of stakeholder engagement for a variety of reasons. Our data includes official documents issued by SMI on its stakeholder engagement process as well as field research and interviews conducted in November 2012. Our interview partners were affected communities, SMI representatives, local, regional and national government officials, and civil society groups.

To facilitate a better understanding of the analysis, we first provide a brief overview of the Tampakan Copper-Gold Project. The second part of this chapter then analyzes SMI's stakeholder engagement program based on the eight key components defined in the IFC Handbook. While the IFC's advice is quite extensive and focuses on a broad variety of aspects, our outline here attempts to summarize the central points of relevance to this case. In a second step, SMI's proceedings are presented and briefly evaluated. The reader should be aware that although we attempted to collect a wide variety of views on SMI's stakeholder engagement processes, we do not claim to present a complete picture of all opinions and experiences regarding the engagement activities. Stakeholders' views differed and the indigenous communities in particular were divided regarding the project. Hence, in the following analysis it should be noted that contrary opinions also exist with regard to SMI's engagement activities. Furthermore, we did not have access to all components of the program, such as SMI's internal proceedings, so certain aspects of the engagement program cannot be evaluated.

5.1 The Tampakan Copper-Gold Project

The planned Tampakan Copper-Gold Mine is situated on the Philippine island of Mindanao in a mountain area predominantly characterized by rainforest and small-scale and subsistence farming. The project seeks to exploit one of the world's largest undeveloped copper-gold deposits. It is estimated that the open-pit mine would yield an average of 375,000 tonnes of copper and 360,000 ounces of gold per annum over 17 years (SMI n. d.(a)). About 5,000 people – approximately 1,000 households – live in the affected area and will require resettlement. The majority of these inhabitants belong to B'laan indigenous communities (SMI 2013: 52; AECOM 2011: 3.4-3).

SMI is the Philippine company executing the operations. The ownership of SMI is divided between several shareholders, with the Australia-based company Xstrata Copper having the major decision-making power. Xstrata Copper is integrated into the Swiss/UK-based Xstrata plc, which merged with Glencore in 2013. During the period analyzed here, which ended in November 2012, Xstrata



Copper was SMI's main shareholder and SMI was therefore committed to Xstrata's Sustainable Development Framework¹⁰. This comprises inter alia the ICMM sustainability principles and guidelines, the UN Global Compact, the UN Declaration of Human Rights, the Voluntary Principles on Security and Human Rights, and the OECD Guidelines for Multinational Enterprises (Hamm et al. 2013: 9).¹¹ SMI also states its commitment to the UNGP (SMI n. d.(b)). Accordingly, the corporation claims to follow a variety of international initiatives that call for the implementation of stakeholder engagement programs.

The first project activities started in the 1990s, when the Philippine subsidiary of the Australian-based Western Mining Corporation (WMC) began its explorations in the Tampakan area based on a Financial and Technical Assistance Agreement (FTAA) granted by the Philippine government in 1995. From the beginning, the project met with opposition and sometimes violence, above all from indigenous communities, but also from lowland farmers who fear that the project will compromise their livelihoods. In 2001, the transfer of the FTAA from WMC to SMI was approved by the Philippine authorities (Goodland/Wicks 2008: 110). In 2013, an Environmental Compliance Certificate (ECC)¹² was granted to SMI (SMI n. d.(c)), for which the preparation of an Environmental Impact Statement (EIS) including stakeholder engagement was a prerequisite. While SMI states that the engagement activities were carried out by the company itself, the EIS was compiled by AECOM, an international consultancy with a Philippine office. The company is a "[...] global provider of professional technical and management support services" (AECOM 2014), yet according to our research, it does not possess specific human rights expertise. The preparation of the EIS also included social and economic impact assessments conducted by the consultancy (ibid.) and, therefore, involved contact with stakeholders. Furthermore, AECOM "[...] provided technical assistance in the stakeholder consultation meetings" (ibid.) of SMI. Since the programs were all conducted for the Tampakan Project and are the responsibility of the operator, i.e. SMI, we will refer only to 'SMI' as the principal agent. In addition to the stakeholder engagement program for the EIS, SMI points out that further stakeholder engagement programs on specific topics are conducted (Hansen Bailey 2011: 69). These include a program focusing on resettlement planning, another concentrating on FPIC of affected indigenous communities and a third program on the Health Impact Assessment (ibid.: 69). Since it cannot be clearly established which engagement processes belonged to which particular program, our data below is not disaggregated, but reviews all of SMI's known stakeholder engagement activities until November 2012.

¹⁰ Now SMI aligns itself with Glencore's Values and Code of Conduct (SMI n. d.(d)).

¹¹ Other parts of the framework are ISO standards, namely ISO 31000, and ISO 14001, the Occupational Health- and Safety Assessment Series 18001 and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

¹² An ECC is required by law in the Philippines for any project that may pose environmental risks, and must be conducted before the project is established or begins operations. Several conditions have to be fulfilled before the Department of the Environment and Natural Resources grants the ECC, which indicates that the project will not cause significant harm to the environment.



During the period analyzed here, the project was still in its pre-operational phase. This means that neither resource extraction nor large-scale construction had begun.¹³ SMI had, however, already established a strong presence in the area through its involvement in community development – which is a government requirement – and through smaller construction projects, namely a road and a base camp, exploratory activities and other preparatory endeavors such as stakeholder engagement.¹⁴

5.2 Analysis of SMI's Stakeholder Engagement following the IFC's Criteria

In this section we assess SMI's stakeholder engagement program on the basis of guidelines issued by the IFC in its Handbook. We base the remainder of this chapter on the eight key components of a stakeholder engagement program set out in the Handbook, and presented in Table 1 of this study; to avoid repetition, some are grouped together. For each section we first set out the instructions issued by the IFC and then provide an assessment of SMI's conduct with regard to the respective guidance. The evaluation of the stakeholder engagement program from a human rights perspective can only be touched on here, but constitutes a central topic in the following chapters. This means that several key points, such as the role of the state, are repeatedly, yet only briefly hinted at, while a more detailed analysis of such issues is provided later on.

5.2.1 Stakeholder Identification & Analysis

Corporations are required to identify and analyze all those groups and individuals who have or may perceive themselves to have a stake in the respective corporate project, which includes direct project sites as well as all related facilities, such as transportation routes and power plants. For this task all possible short-term and future social and environmental project impacts need to be identified and should then be aligned with identified stakeholder groups (IFC 2007: 14). The corporation – supported by relevant experts – should ascertain the stakeholder groups' main interests and obtain relevant socio-economic and cultural information to ensure that future engagement activities are appropriate. Here, a crucial task includes verifying the legitimacy of stakeholder repre-

¹³ To enter into the operational phase, SMI requires further government approvals and the FPIC of the indigenous communities affected by the project.

¹⁴ At the time of writing, the project remains at this stage of development. Due to a variety of issues, inter alia the existence of a ban on open-pit mining in the province of South Cotabato, the project has not progressed significantly in recent years (Valencia 2014). According to media reports, the operation has also been downsized dramatically, with 920 lay-offs and a reduction in equipment and office space. Activities now focus on maintaining community support and overcoming the obstacles to the start of the operational phase. Currently, operations are supposed to start in 2019 but a further postponement is expected (Espejo 2014a). In addition, ownership of the project is likely to change. According to media reports, Glencore – currently holding a majority of 62.5% of the 40% controlling equity – is preparing to sell its shares in the project. At the same time the Philippine corporation Alsons Prime Investment Corporation (APIC) has made an offer to buy the Philippine stake of the Australian Indophil Resources NL, which includes a 37.5% share of the Tampakan Project's controlling equity (Espejo 2014b).



sentatives. In this regard, useful sources of information for the corporation and stakeholders are the government, local NGOs or community-based organizations, and project employees. In all these steps, the IFC urges corporations to establish open lines of communication and engage with stakeholders in *their* environment, for example within local communities.

SMI's Stakeholder Engagement Process

In its ESIA, SMI describes the steps undertaken to identify stakeholders for its EIS stakeholder engagement program in accordance with the prevailing definition of stakeholders, introduced at the beginning of this chapter (Hansen Bailey 2011: 65). SMI relied on previous consultations regarding the project and on further desk research to identify stakeholders and divided those selected into nine groups “[...] to enable specific consultation strategies to be developed” (ibid.: 65). These key groups include national, provincial, municipal and barangay¹⁵ governments, villagers requiring resettlement or otherwise impacted by the mine, local community-based organizations or interest groups, such as schools or NGOs, indigenous groups living on affected territories, local business representatives and local media (ibid.: 65). According to SMI’s 2012 Sustainability Report, stakeholders involved in other engagement processes also include staff and contractors, suppliers and academics (SMI 2013: 49). The main basis for the identification of stakeholders appears to be the geographical scope of the project, including possibly affected water sources. Stakeholders who may be impacted by secondary facilities, such as a power plant, have been included in separate engagement processes (ibid.: 49). It is not clear from SMI’s records or our interviews how SMI identified stakeholders who have an interest in the project or who perceive themselves to be affected, nor how these groups are included in stakeholder engagement activities. Furthermore, no official records that are easily obtainable for stakeholders exist of all the civil society organizations involved; as a result, neither their number nor their orientation or purpose can be reconstructed.

SMI compiled profiles of the identified host communities within the “proposed mine project boundary” (AECOM 2011: 3.4-5) and these profiles are included in the EIS (ibid.: 3.4-1-3.4-22). However, as far as could be established, such documentation does not exist for other stakeholder groups. The profiles summarize a variety of separate studies based mainly on secondary data and a few consultations. These studies include the following: socio-economic profiling of the host municipalities and barangays, ethnography and cultural heritage, land ownership and land value, perception survey, public health and sanitation, visual impact assessment, and traffic impact assessment. Sources of information are government websites, a survey conducted by Social Weather Station (a private non-profit research institution), key informants, who are not further specified, municipal reports and others (AECOM 2011: 3.4-2). SMI also states on its homepage that the corporation partnered with the Department of Interior and Local Government and three local government units for support (SMI

¹⁵ Barangays are local government units below the city level.



n. d.(e)). Yet neither the EIS nor other publications specify how these studies informed SMI's conduct nor has it been made transparent by SMI which information it relied upon. Furthermore, in interviews with indigenous community members, we were informed that indigenous communities living in high and remote mountainous areas were not included by SMI in its stakeholder engagement program.

Another contentious issue concerns the identification of legitimate representatives. While SMI involved the indigenous tribal councils in its program, interviews showed that indigenous communities possess various forms of representation, including the traditional Fulong leadership.¹⁶ These leaders were not invited by SMI, which is consistent with the approach followed by the Philippine state. However, this caused great discontent and points to a failure to take account of local circumstances. Similar problems affect the involvement of government representatives. While the Mayor of Tampakan is the elected representative of the municipality, he is also the owner of a construction company employed by SMI. Although the Mayor did not reveal this to the research team when asked, it was confirmed by several interviewees, including SMI. This double role of the Mayor may lead to a conflict of interest between the pursuit of private business objectives, on the one hand, and the representation of his constituents, on the other.

While SMI involves a variety of stakeholder groups, the identification process lacks transparency and context sensitivity. Important details of IFC's guidance are neglected, which is also a shortcoming from a human rights perspective.

5.2.2 Providing Information to Facilitate Participation

Here we focus on two IFC categories, namely 'Information Disclosure' and 'Reporting to Stakeholders'. Throughout the project lifecycle, information on project development and impacts should be made available to all stakeholders, in accordance with the IFC's principles of good practice. These are: *disclose early, disclose objective information*, which the IFC understands as "tell it like it is" (IFC 2007: 28), *design disclosure to support consultation*, meaning stakeholders should receive the information they require to participate "in an informed manner" (ibid: 29), *provide meaningful information*, which concerns the chosen format and language, and *ensure the accessibility of information* (ibid.: 28-29). As part of the process of information disclosure, stakeholders should also be informed about whom to contact on urgent matters, how stakeholders can provide input and how it will be integrated into decision-making processes (ibid.: 31). Regarding the entire process, the IFC calls for a "presumption in favor of disclosure" (ibid.: 28), which means that all information should be made publicly available, "especially if there is no compelling reason not to share it" (ibid.: 28).

Advice is also provided on how to 'report back' to stakeholders. With reference to international standards established for corporate reporting, the Hand-

¹⁶ Within the B'laan social structure, Fulong are traditional village chieftains.

book emphasizes that these reports should concentrate on possible impacts and how they will be contextualized and managed, and how corporations should respond to stakeholder concerns and expectations (IFC 2007: 93).

SMI's Stakeholder Engagement Process

SMI is very clear about the fact that it uses a variety of methods and outlets to distribute information about the Tampakan Project. It maintains a website with project information and has set up three information centers (SMI 2013: 49-50). Information was also provided through direct engagement with stakeholders. The EIS stakeholder engagement program included an Information, Education and Communication (IEC) Campaign, which involved meetings with “[...] key stakeholders to provide them with detailed information about the project”; this took place in stakeholder meetings attended by 1,531 people (Hansen Bailey 2011: 65). As is evident from the list of stakeholders invited to the IEC Campaign, there was a clear focus on representatives, including government representatives from all levels, indigenous tribal councils, and business, civic and community organizations (ibid.: 67). For other community members, an internet-based communication system was established and a number of meetings in different formats took place (SMI 2013: 50). Information provided to indigenous communities is translated into local languages and SMI insists that “culturally-appropriate” techniques are relied upon, “based on the advice of local experts” (ibid.: 49).

In order to inform a broader set of stakeholders, SMI publishes annual Tampakan Copper-Gold Project Sustainability Reports¹⁷ and maintains the aforementioned website. However, when comparing sustainability reports with stakeholder interviews, it does become apparent that the reports focus on positive effects of the project. By concentrating on numbers and activities, these reports fail to inform about the existential concerns of stakeholders and the disagreements and conflicts arising in communities through the presence of the project.

While the description above illustrates that SMI does indeed engage in a variety of initiatives to reach stakeholders, our interviews demonstrate that many community members often only felt partially informed about the project, or even have a wrong image of the nature of the project. SMI apparently did not check back with communities to ensure that the information provided was understood and sufficient. Moreover, no independent source of information was available to stakeholders. Several interviewees informed us that at public meetings, speakers opposing the mine were not allowed to officially present their points of view. Some indigenous community members also said that they often did not understand the format of meetings and what was expected of them, indicating that the cultural appropriateness of the process of information disclosure should be questioned. Lastly, while SMI points out that stakeholders’ questions were collected and responded to in a timely manner (SMI 2013: 50),

¹⁷ At the time of publishing this study, the last Sustainability Report 2012 was issued in 2013.





stakeholders informed us that it was not clear to them how they could attain answers to their queries.

The requirements set by the IFC are, accordingly, only partially fulfilled. From a human rights perspective, the insufficiencies of information disclosure are a serious problem: As demonstrated in *Chapter 4.1*, stakeholders have a right to be informed about projects affecting them, which presupposes that the information is provided in a manner enabling informed participation. The fact that only SMI distributes information to stakeholders in the timeframe examined also points to negligence by the state, which should ensure that its citizens have access to diverse sources of information.

5.2.3 Building Constructive Dialogue

In this section we summarize information on two steps set out by the IFC, namely ‘Stakeholder Consultation’ and ‘Negotiation and Partnerships’. For the stakeholder consultation component, the IFC provides the most detailed guidance. A five-step iterative process is set out: Firstly, corporations should plan ahead to establish the purpose, requirements, techniques and priority issues (IFC 2007: 35-36). Secondly, they should consult using basic principles of good practice. Consultation should be targeted, early, informed, two-way, gender-inclusive, localized, free, documented and on-going (ibid.: 38). In a third step, corporations are asked to incorporate feedback provided by stakeholders. Fourthly, the process and the results of consultations should be documented, and fifth and finally, should be reported back to stakeholders (ibid.: 38-41). The Handbook also provides guidance on how to achieve informed participation, i.e. a more “[...] in-depth exchange of views and information” (ibid.: 44), what to consider when consulting indigenous communities, and how to incorporate gender sensitive methods.

Regarding negotiation, which differs from consultation as it “[...] intends to reach agreement” (ibid.: 63), the IFC points out that it should not only be undertaken when legally required, but may also constitute a useful approach when issues are particularly sensitive (ibid.: 64), for instance when the concerns of stakeholders may jeopardize the operation. Like consultations, negotiations should be conducted in good faith, with the involvement of legitimate representatives, equal access to information and participatory techniques (ibid.: 64-65).

SMI’s Stakeholder Engagement Process

According to information provided by SMI, the company appears to have established a detailed plan for its stakeholder engagement program. In parallel to general consultation practices, a resettlement process and FPIC began in 2012, supported by the National Commission on Indigenous Peoples (NCIP) and in accordance with the provisions of the Philippines’ Indigenous Peoples Rights Act of 1997. Interviews with SMI show that various activities were initiated to inform stakeholders, collect their feedback and provide responses.

However, according to our interviews, the consultation process conducted until November 2012 has a mixed record. The main goal of these activities was



to gain the approval from indigenous communities so that the mining project could proceed. This is illustrated by the lack of critical voices at stakeholder meetings and the impression of a number of stakeholders that SMI collected their input yet failed to respond to concerns. This perception is reinforced by the fact that SMI does not clearly communicate how the consultations influence the project. Moreover, consultations predominantly took place in the form of large gatherings, which may inhibit marginalized or disadvantaged groups and individuals from voicing their opinions, and not all representatives of indigenous communities were included (see *Chapter 5.2.1*). Furthermore, according to interviews, while SMI took over the project in 2001, larger-scale consultation and information processes began only after the corporation had established a clear presence in the area. While the responsibility for early engagement, namely before any project-related activities began, lay with the WMC, which failed to fulfill this task adequately, SMI should have attempted to rectify this situation by engaging stakeholders as early as possible. The extent to which communities can decide freely on the project also has to be questioned in light of SMI's strong presence. Communities depend on SMI to provide basic services such as education and health care, as the state is largely absent in these remote communities. Accordingly, stakeholders are aware that a termination of the Tampakan Project means that the services will eventually cease to be provided.

According to information publicized by SMI, it appears that the talks on the resettlement processes can be characterized as negotiations. Resettlement Committees have been established and the NCIP is also involved to ensure that the process for FPIC follows the legally prescribed procedures. SMI's information attests that official community representatives and elected community members participate (SMI n. d.(f)) and the resettlement plan envisages that affected communities will "[...] participate fully in key decisions relating to resettlement" (SMI n. d.(g): 1). However, the NCIP and affected communities argue that the NCIP does not have the resources or experience to fulfill its role in the process effectively and that the procedure is affected by similar issues as the consultations.

In other words, SMI's conduct only superficially fulfills the IFC criteria. The influence exerted on stakeholders through the provision of services is a particularly crucial shortcoming from a human rights perspective as it inhibits a free decision by the indigenous communities on the future of the project. The resettlement process also highlights the shortcomings of the state, whose responsibility it is to ensure that the rights of indigenous communities are protected and that the agency tasked with this duty – the NCIP – is equipped with sufficient resources and expertise. These issues also point to the shortcomings of private governance arrangements since the interests of the corporation can prevail.

5.2.4 Providing Channels for Stakeholders' Grievances

Grievance management is highly relevant to a legitimate stakeholder engagement process as it provides stakeholders with the opportunity to voice urgent concerns quickly and directly. It allows the corporation to respond immediately, thereby preventing possible further escalations of discontent and negative project impacts. A grievance mechanism should fit the project, operate in a



transparent manner and follow a clear, timely and predictable process openly communicated to stakeholders. It should be easily accessible, transparent and culturally appropriate (IFC 2007: 70-73). In deeper conflicts, seeking the assistance of a third party may be necessary. Crucially, stakeholders should always be aware that they have recourse to judicial channels (ibid.: 76).

SMI's Stakeholder Engagement Process

SMI started its activities in the Tampakan area without a coordinated, centralized grievance mechanism. Complaints were recorded by various departments and no clear process was established or communicated to stakeholders. Interviewees also emphasized that during this time several complaints brought to SMI's attention at community meetings were not responded to. According to SMI, the corporation reformed this system in 2012 and established a grievance policy based on the IFC Performance Standards. The company provided us with an overview of the grievance mechanism and states that "64 formal and informal engagements" (SMI 2013: 52) took place to ensure that community members are aware of the process. 296 complaints were lodged in 2012, of which 213 were resolved by SMI, 76 were referred to "appropriate third parties" and seven remained open in 2012 (ibid.: 52). However, many interviewees said that they were not aware of a specific mechanism.

The lack of a centralized grievance mechanism during the first years of SMI's presence constitutes a grave breach of the IFC's criteria as well as being a shortcoming from a human rights perspective since it hinders participation, particularly when urgent matters arise. While the establishment of a grievance resolution mechanism in 2012 is a positive development, its effectiveness cannot be evaluated in this paper since at the time of data collection it had only recently come into operation.

5.2.5 Positioning Stakeholder Engagement in the Corporation

The IFC's components 'Stakeholder Involvement in Project Monitoring' and 'Management Functions' both require the integration of the stakeholder process into the corporate structure. Involving stakeholders in project monitoring aims to increase transparency and "[...] encourage local stakeholders to take a greater degree of responsibility for their environment and welfare in relation to the project, and to feel empowered" (IFC 2007: 79) to manage issues impacting their lives. To achieve participatory monitoring, the corporation should provide capacity building if required, and methods and indicators meaningful to stakeholders should be identified through collaboration (ibid.: 81-82). The integration of the stakeholder engagement program into regular corporate processes, particularly the social and environmental management system, means that clear reporting lines have to be established to ensure consistency. Furthermore, the stakeholder engagement process has to be communicated internally and commitments made to stakeholders have to be kept track of (ibid.: 100-107). Another aspect to consider here are contractors, who should also be made aware of the overall engagement strategy and should comply with the principles set out by the corporation.

SMI's Stakeholder Engagement Process

According to our data, SMI is not engaging stakeholders in project monitoring processes. However, our data collection ended before the project had entered its operational phase. Stakeholders are involved in the allocation of resources provided by SMI: Foundations have been established, staffed by members of SMI, the NCIP, the Mines and Geosciences Bureau, indigenous persons and local communities, to decide on the use of these funds. However, several indigenous community members argued that since they do not have a voting majority in these foundations, they are not always able to influence decisions. For the resettlement process, a Resettlement Oversight Committee was established, which comprises representatives from SMI, the NCIP, the Philippine Mines and Geosciences Bureau, and the Provincial and Municipal Local Government Units, to “[...] ensure transparency and compliance with leading practice and SMI’s commitment to fairness and equity” (SMI n. d.(f)). This step can be evaluated as an inclusion of stakeholders in certain aspects of project monitoring, yet the issues affecting the NCIP, described above, cast doubt on the extent to which the interests and concerns of indigenous community members can be safeguarded through this committee. It remains to be seen whether stakeholders are included in project monitoring once the project enters its operational phase.

Regarding the integration of the stakeholder engagement process into SMI’s corporate structure, our information indicates that SMI fulfills this component of the IFC’s criteria. Awareness of the importance of engaging stakeholders also seems to be present amongst SMI representatives. The lack of a central grievance mechanism during the first years of SMI’s presence, however, indicates that this awareness has been lacking until recently.

6. Discussion of the Empirical Findings regarding SMI’s Stakeholder Engagement Process

This INEF-Report investigates to what extent stakeholder engagement as a form of private governance can contribute to a company’s human rights due diligence performance. The richness of the data available to us regarding SMI’s stakeholder engagement program and the applicability of the IFC Handbook as an evaluative tool for stakeholder engagement allowed us to gain a broad spectrum of empirical findings connected to our research question. In this chapter, we discuss these findings in light of our two initial sub-questions:





Did SMI comply with the criteria set out in the IFC Handbook? Did the corporation fulfill its human rights responsibility regarding stakeholder participation?

Are the criteria set out in the IFC Handbook for stakeholder engagement processes sufficient from a human rights perspective?

6.1 SMI's compliance with the IFC Handbook

36

SMI has implemented diverse stakeholder engagement activities, and from the documentation of these activities formal compliance with the IFC's criteria can be confirmed. A decisive and positive aspect is that SMI has integrated its stakeholder engagement processes into its environmental and social management system and attempts to provide detailed information through various outlets while also collecting inputs from stakeholders. This suggests that SMI is committed to the process as substantial resources – time, money and staff – are invested.

However, our analysis identified important shortcomings in SMI's compliance with the criteria set out by the IFC. Firstly, the stakeholder engagement process has not covered all relevant corporate activities affecting communities, such as the construction of a main road leading to the mine. Secondly, the corporation itself impedes indigenous communities from exercising their right to FPIC. This is due to the set-up of SMI's required contributions to community development, which improve education and health services yet communicate to the communities that without the mining project, public services will again deteriorate. This dependency runs counter to the principles of FPIC and the international frameworks that SMI claims to uphold. Thirdly, the overall purpose of a stakeholder engagement program, namely the establishment of an open dialogue, was not fully realized. Our interviews showed that stakeholders often felt that their concerns were not responded to, and they were also unsure of the goal and methods of the process, which negatively affected their participation. To a large extent, this outcome can be explained by the top-down approach employed by SMI and the associated lack of transparency. Stakeholders were – as far as our research could establish – not sufficiently involved in the planning and design of the process and while stakeholder concerns were collected, it was not clear how the corporation responded to issues raised by stakeholders.

This lack of disclosure also affects other areas of stakeholder engagement and compromises the development of dialogue: While SMI provides extensive documentation on various aspects of the stakeholder engagement process, gaps remain. For example, it is not clear how SMI determined who should be involved (communities, NGOs and so on) or which civil society organizations were selected to participate and for what reasons. SMI is also not open about its course of action regarding the conduct of the mayor of Tampakan, who mixes official duties with personal business interests, calling into question his ability to represent the interests of his constituents legitimately. Nor is it clear how feedback provided by stakeholders is used by the corporation. In addition, information about SMI's grievance mechanism was not distributed effectively to



everyone concerned. These gaps in transparency result from inadequate documentation of the process but also directly affect the stakeholders, who lack the information required to participate effectively and make informed decisions about the project. The lack of disclosure indicates that SMI's stakeholder engagement program is not designed or implemented in mutual agreement with stakeholders but is controlled and imposed by SMI.

These shortcomings lead us to the conclusion that, based on SMI's documentation, only the general structure of SMI's stakeholder engagement program complies with IFC guidance. The important features legitimizing an engagement program, which are also described in the IFC Handbook and include, for instance, the 'back checking' of feedback with stakeholders, have largely been neglected. As has been evinced above, SMI's stakeholder engagement process followed a top-down approach and aimed to achieve the consent of affected indigenous communities and approval in other areas. While this approach is consistent with the goals of an enterprise, responsible business conduct would require the corporation to ensure that opposing interests are not overpowered, particularly in a volatile and sensitive context such as Tampakan.

In addition to this flawed approach to stakeholder engagement, we identified a lack of context sensitivity as a main cause of the shortcomings in SMI's program. A corporation is required to analyze the situation it enters into carefully at the outset and consider local circumstances in its stakeholder engagement, so that it does not become complicit in human rights violations. However, when acquiring the mining project from WMC, SMI did not sufficiently consider the economic and political context in the project area, which is characterized by cultural diversity, poverty, especially in many indigenous communities, political neglect of the region, conflicting laws regarding the extractive industries, and ongoing violent conflict. Instead, the corporation deepened the conflicts: One of the causes of contention in the Tampakan area is the mining project itself since assumed winners and losers of the mining project oppose each other.

Furthermore, SMI did not sufficiently consider the weak government institutions involved in the project and the lack of state presence, particularly in the indigenous communities. Our analysis above has illustrated that these weaknesses have negatively affected the stakeholder program as citizens do not receive sufficient independent information from the state and the protection of indigenous interests and rights through the NCIP is inadequate. The lack of state presence and, hence, of public services, has also triggered the aforementioned dependence of communities on SMI since termination of the mining project would end SMI's community support. Weak government institutions also mean that outside control of the corporation is very limited; in other words, the state is not equipped to ensure that the corporation adheres to all national and international requirements, including those on stakeholder engagement. These circumstances should have been considered by SMI and should have had a major impact on its decision to enter into this environment and its subsequent conduct, including its stakeholder engagement program.



6.2 Evaluation of the IFC Handbook from a human rights perspective

The description in the IFC Handbook of how to implement a stakeholder engagement process is quite elaborate and certainly provides guidance for corporations. If this guidance is followed in detail, a corporation's stakeholder engagement process should for the most part be compliant with the main international standards. The calls for a policy "[...] in favor of disclosure" (IFC 2007: 28) and for transparency regarding the entire process should, if followed diligently, ensure compliance with the right to information. Furthermore, the design of participation methods in cooperation with stakeholders and an openness to reform the process in response to stakeholder feedback are crucial prerequisites for participation. However, the specific case of SMI's stakeholder engagement process also reveals that important aspects of stakeholder engagement are not covered by the Handbook: One major shortcoming is the Handbook's understanding of what constitutes participation. Here, a clear human rights perspective is lacking because the voice of people possibly affected by a corporate project is not incorporated into the instrument. The Handbook follows a management logic, assuming that all issues a corporation might encounter in its exchange with stakeholders can be solved through dialogue and in line with the company's interests. Accordingly, the process of stakeholder engagement as understood in the Handbook is directed at gaining consent for a project with limited reforms. This is most clearly visible in the lack of an exit option. The IFC Handbook does not state that in cases in which conflicts with communities, particularly indigenous groups, cannot be solved through engagement, a project may have to be suspended or even terminated. This could occur, for instance, when resettlement to adequate land is not possible or a mining project is expected to destroy the environment serving as a basis for communities' livelihoods. Such consequences infringe the human rights of all affected people, but are particularly critical violations for indigenous communities, who are frequently highly marginalized and whose specific rights regarding their land and culture have been enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Hence, the Handbook fails to foreground the human rights of people affected, as this would call for a bottom-up approach and an open outcome of the process.

Yet these shortcomings do not only concern the IFC Handbook. The UNGP, which constitute the main international framework for the corporate responsibility to respect human rights, also fall short in their requirements for stakeholder engagement. The UNGP contain very few requirements for 'effective' stakeholder participation; for example, they state that preferences in language or other obstacles to engagement should be taken into account. No mention is made, however, of the centrality of stakeholder inclusion to the overall due diligence process, the importance of participation from a human rights perspective, or instructions on how corporations should handle stakeholder input. Accordingly, the wording of the UNGP also requires a further specification of

'effective' stakeholder engagement in the sense that the human rights of people affected have to come first.¹⁸

7. Conclusion

This report set out to establish to what extent corporate stakeholder engagement programs can contribute to a corporation's human rights due diligence performance. Behind this inquiry lies the question whether such private governance initiatives can be appropriate tools for corporations to fulfill their human rights responsibility regarding stakeholder involvement. Stakeholder engagement is viewed not only as a responsibility of enterprises in its own right, but also as a prerequisite for other components of a corporation's human rights due diligence process. Our analysis sought to test these assumptions by investigating how the nature of a specific stakeholder engagement program affects the corporation's due diligence performance. We investigated these issues on two levels. Firstly, by focusing on a case study, namely SMI's stakeholder engagement program for a planned copper-gold mine in the Philippines, we examined stakeholder engagement processes at an operational level. At a higher level, we question the concept of stakeholder engagement as a private governance initiative and the international instruments endorsing it from a human rights perspective. Therefore, we employed guidance for stakeholder engagement set out by the IFC in its *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (2007) since the IFC is the largest global development institution focusing on the private sector and a central standard setter in this field. The steps outlined in the Handbook were applied to SMI's process of stakeholder engagement in order to evaluate SMI's conduct and to establish whether the criteria set out by the IFC are sufficient for a stakeholder engagement program from a human rights perspective.

On an empirical level, our analysis showed that while SMI's process of stakeholder engagement is extensive, the participation and consultation of stakeholders in the process do not meet human rights criteria in a comprehensive manner. This refers to the fact that stakeholders are not sufficiently integrated into the process, transparency is inadequate and the provision of public services by SMI obstructs a process of participation that is independent and free from interference and persuasion. We identified two main interconnected causes. Firstly, the stakeholder engagement program follows a top-down approach which aims to reach consent and legitimacy for the company's activities. Secondly, SMI's conduct lacks context sensitivity, which would have mandated more consideration of the weak governance structures, the socioeconomic prob-

¹⁸ Currently, the United Nations Guiding Principles Reporting Framework is being developed by Shift and Mazars and supported by the UN Working Group on Business and Human Rights. The framework includes further specification of how companies should report on their stakeholder engagement processes, which will presumably include a definition of the required characteristics of a stakeholder engagement program, if only to a limited degree. Further information can be accessed here: <http://www.ungpreporting.org/consult-the-reporting-framework/download-the-reporting-framework/>.





lems in the project area and the conflicts affecting the region. In order to avoid such shortcomings, and in accordance with the UNGP, companies are required to carry out a Human Rights Impact Assessment, which SMI has failed to do.

While the issues affecting the stakeholder engagement process could be mitigated to some extent by better compliance with international guidance, our evaluation of the IFC Handbook from a human rights perspective reveals that here, too, deficits exist. We found that while the guidance set out by the IFC is quite extensive and should foster good business conduct if followed diligently, the management logic employed in the Handbook envisages that all issues arising in connection with stakeholders can be solved. The existence of insurmountable conflicts is not considered and the presence of a project itself is not questioned. This perspective is not compatible with a rights-based approach, which would require the prioritization of stakeholders' rights, needs and views, and also offer the possibility for a project to be terminated on the basis of stakeholder input. A rights-based approach would also require the concept of stakeholder engagement to be underpinned by the recognition that the inclusion of stakeholders in project planning and execution follows from the rights of stakeholders to participate in and be informed about (corporate) projects affecting them. The importance of the overall conception informing a stakeholder engagement program is demonstrated by the shortcomings of SMI's conduct, which largely stem from the lack of a rights-based approach. Moreover, the Handbook strongly emphasizes the business case and thus promotes stakeholder engagement as a tool for corporations to avoid conflicts and further costs. The insufficiencies in both SMI's conduct and the IFC Handbook illustrate that more is required – as pointed out above – to ensure that corporations fulfill their human rights responsibilities towards stakeholders and their societies.

In answer to our research question, our results lead us to conclude that the extent to which stakeholder engagement can contribute to a corporation's human rights due diligence performance depends on a variety of factors. Principally, a stakeholder engagement program is conducive to a better due diligence performance. This is so because the participation of stakeholders in projects affecting their lives follows from the concept of human rights and has also been enshrined – at least in principle – in the UNGP as a key element of corporate human rights responsibility. The case of SMI also illustrates that communicating with stakeholders and building relationships fosters corporate respect for human rights. Yet the degree to which a program contributes to a corporation's due diligence performance depends, as mentioned, on a variety of factors. First and foremost, the nature and quality of the program itself are decisive. As the case of SMI shows, even extensive consultation and information techniques are insufficient if the human rights principles of participation are not followed diligently. This in turn shows that human rights are not sufficiently respected by the corporation and that shortcomings in the due diligence performance exist. Moreover, our results confirm that the quality of a stakeholder engagement program affects other aspects of a corporation's human rights due diligence process. SMI's lack of context sensitivity and insufficient knowledge of the project's impacts can largely be attributed to the top-down approach employed in the stakeholder engagement program, which also follows from the IFC Handbook. Consequently, the mere existence of a stakeholder engagement program –



even if it is as extensive as SMI's – does not guarantee a thoroughly positive contribution to a corporation's due diligence performance. In order to improve such private governance arrangements, the adoption of a rights-based approach is called for, which would entail an ongoing dialogue, on the basis of equality, with those affected and prioritization of human rights in order to fulfill the responsibilities set out in the UNGP.

This point brings us to another decisive factor which influences the extent to which stakeholder engagement can contribute to a corporation's human rights due diligence performance, namely a project's context. The conflicting laws on mining activities, the ill-equipped NCIP, the questionable role of the mayor of Tampakan and the lack of public services in the area of the Tampakan Project all derive from weaknesses of the Philippine state. Crucially, these factors have greatly influenced the effectiveness of SMI's stakeholder engagement program. It can be argued that it lies within SMI's responsibility to assess this context and to take decisions regarding the project on this basis. However, the case of Tampakan exemplifies that to a certain degree the context of a project is characterized by unpredictability. Hence, even a stakeholder engagement program designed in complete accordance with human rights standards may exhibit shortcomings in such a context as not all consequences and effects can be accounted for. The contribution of the engagement program to other aspects of human rights due diligence would thus diminish.

Consequently, the question emerges if stakeholder engagement as a form of private governance can be adapted to fulfill the requirements laid down in the UNGP. The inherent logic of private governance – corporations regulating among other things their own conduct – appears to be insufficient to tackle the complex dynamics and demands companies encounter in projects such as the Tampakan Copper-Gold Mine.

The present case study suggests that a company's goals of starting a project and achieving profits, coupled with weak public governance structures in the project area, pose limits to private governance since corporations remain free to decide if, how and to what degree they will attempt to fulfill international standards. As a consequence, the interests and needs of those affected are not adequately considered. It thus became clear that private governance arrangements, which predominantly aim at swift and smooth project development, are inadequate to ensure that businesses act with human rights due diligence as responsible actors of society. More research is, however, needed to confirm this conclusion for cases where a corporation fulfills international standards more extensively.

Moving beyond the private governance approach, our analysis indicates that the performance of corporations could be improved from a human rights perspective if the state and also international organizations such as the IFC took steps to ensure that stakeholder engagement processes follow human rights standards. A revision of the guidance provided to corporations as well as outside control mechanisms could, for example, foster more responsible business conduct. Here, an important role is identified for National Human Rights Institutions (NHRIs). The calls of many civil society organizations for binding regulations for businesses in order to secure a human rights approach are related to these demands. However, it remains an open question if binding regulation



would foster a strong human rights perspective in business projects and the prioritization of human rights in case of conflicting interests. Laws enforced by the state may make the same mistake and follow a top-down approach. Furthermore, as the case of the Philippines illustrates, weak governance structures in the area mean that states may not be equipped to enforce laws or to ensure that corporations fulfill international standards.

Accordingly, in the case of stakeholder engagement programs, the solution to the problem seems to lie only partially in the improvement of compliance. The larger aim must be to perceive human rights as the empowerment of people, also in respect to mining projects. This change must be reflected in international instruments, above all the UNGP, which corporations rely upon to fulfill the requirement to act with due diligence. Further research should be conducted to establish how this shift in perspective can best be achieved and to investigate what types of governance arrangements can best ensure that the human rights of stakeholders are not jeopardized by corporate projects.

8. References

- AECOM 2014: About. <http://www.aecom.com/About> (14.03.2014).
- AECOM 2011: Environmental Impact Statement, Philippines: SMI.
- Albareda, Laura 2008: Corporate responsibility, governance and accountability: From self-regulation to co-regulation, in: *Corporate Governance*, 8 (4), 430 – 439.
- Blowfield, Michael/Frynas, Jędrzej George 2005: Setting new agendas: Critical perspectives on Corporate Social Responsibility in the developing world, in: *International Affairs*, 81 (3), 499–513.
- Brammer, Stephen/ Jackson, Gregory/ Matten, Dirk 2012: Corporate Social Responsibility and institutional theory: new perspectives on private governance, in: *Socio-Economic Review*, 10 (1), 3–28.
- Cutler, Claire A./Haufler, Virginia/Porter, Tony 1999: *Private Authority and International Affairs*, Albany: State University of New York Press/SUNY series in Global Politics.
- Dashwood, Hevina S. 2012: CSR norms and organizational learning in the mining sector, in: *Corporate Governance*, 12 (1), 118–138.
- Dawkins, Cedric E. 2013: The Principle of Good Faith: Toward Substantive Stakeholder Engagement, in: *Journal of Business Ethics*, 121 (2), 1-18.
- Dupuy, Kendra E. 2014: Community development requirements in mining laws, in: *The Extractive Industries and Society*, 1 (2), 200–215.
- Espejo, Edwin 2014a: Glencore-Xstrata selling Tampakan stake. *Rappler*, 30.01.2014. <http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/49261-glencore-xstrata-selling-tampakan-stake> (05.11.2014).
- Espejo, Edwin 2014b: Alsons offers to buy Australia's Indophil PH stake for P14B. *Rappler*, 23.09.2014. <http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/69904-alsons-offers-buy-indophil-ph-stake> (05.11.2014).
- Fransen, Luc 2012: *Corporate social responsibility and global labor standards. Firms and activists in the making of private regulation*, New York: Routledge.
- Freeman, Richard E./Reed, David 1983: Stockholders and stakeholders: a new perspective on corporate governance, in: *California Management Review*, 25 (3), 88–106.
- Friends of the Earth [FOE]/Global 2000/Sustainable Europe Research Institute [SERI] 2009: *Overconsumption - Our use of the world's natural resources*. https://www.foeeurope.org/sites/default/files/publications/FoEE_Overconsumption_0909.pdf (16.01.2015).





- Goodland, Robert/Wicks, Clive 2008: Philippines: Mining or Food, London: Working Group on Mining in the Philippines.
- Hamm, Brigitte/Schax, Anne/Scheper, Christian 2013: Human Rights Impact Assessment of the Tampakan Copper-Gold Project. Mindanao, Philippines, Aachen/Luzern: Bischöfliches Hilfswerk MISEREOR e.V. & Fastenopfer.
- Hansen Bailey 2011: Environmental and Social Impact Assessment – Tampakan Mine Project, Philippines: SMI.
- Haufler, Virginia 2003: Globalization and Industry Self-Regulation, in: Miles Kahler/David A. Lake (eds.): Governance in a Global Economy. Political Authority in Transition, Princeton: Princeton University Press, 226–254.
- International Council on Mining and Metals [ICMM] 2014: The role of mining in national economies (2nd edition).
<http://www.icmm.com/document/7950> (28.04.2015).
- International Finance Corporation [IFC] 1998: Doing Better Business Through Effective Public Consultation and Disclosure – A Good Practical Manual, Washington: IFC.
<http://www.ifc.org/wps/wcm/connect/54c46b8048855702bb44fb6a6515bb18/PublicConsultation.pdf?MOD=AJPERES&CACHEID=54c46b8048855702bb44fb6a6515bb18> (11.06.2015).
- International Finance Corporation [IFC] 2007: Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets, Washington: IFC.
- International Finance Corporation [IFC] 2012: Performance Standards on Environmental and Social Sustainability.
http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES (16.01.2014).
- International Finance Corporation [IFC] 2014: A Strategic Approach to Early Stakeholder Engagement – A Good Practice Handbook for Junior Companies in the Extractive Industries.
https://commdev.org/userfiles/FINAL_IFC_131208_ESSE%20Handbook_web%201013.pdf (30.04.2015).
- International Labour Organization [ILO] 1989: Indigenous and Tribal Peoples Convention (No. 169).
<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm> (20.02.2014).
- International Organization for Standardization [ISO] 2010: ISO 26000.
<http://www.iso.org/iso/home/standards/iso26000.htm> (18.06.2015).
- Keck, Margaret E./Sikkink, Kathryn 1998: Activists beyond Borders: Advocacy Networks in International Politics, Ithaca: Cornell University Press.
- Lockie, Stewart et al. 2009: Coal mining and the resource community cycle: A longitudinal assessment of the social impacts of the Coppabella coal mine. Environmental Impact Assessment Review 29, 330-339.



- Mayer, Frederick/Gereffi, Gary 2010: Regulation and Economic Globalization: Prospects and Limits of Private Governance, in: *Business and Politics* 12 (3), Article 11.
- Moir, Lance 2001: What do we mean by Corporate Social Responsibility?, in: *Corporate Governance*, 1 (2), 16–20.
- Organisation for Economic Co-operation and Development [OECD] 2004: OECD Principles of Corporate Governance.
<http://www.oecd.org/corporate/oecdprinciplesofcorporategovernance.htm> (15.01.2014).
- Organisation for Economic Co-operation and Development [OECD] 2011: OECD Guidelines for Multinational Enterprises. 2011 Edition.
<http://www.oecd.org/daf/inv/mne/48004323.pdf> (30.04.2015).
- Organisation for Economic Co-operation and Development [OECD] 2013: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2nd ed.).
<http://www.oecd.org/corporate/mne/mining.htm> (10.12.2014).
- Partnership Africa Canada 2012: Stakeholder Engagement and Due Diligence. Background Note for the Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises (DAF/INV/NCP/RD(2012)1) (29.05.2012).
- Polanyi, Karl 1957: *The Great Transformation*, Boston: Beacon Press.
- Republic of the Philippines 1997: Republic Act No. 8371 [Indigenous Peoples Rights Acts]. An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.
<http://www.opapp.gov.ph/resources/indigenous-peoples%E2%80%99-rights-act-1997> (13.01.2014).
- Ruggie, John G. 2014: Global Governance and “New Governance Theory”: Lessons from Business and Human Rights, in: *Global Governance*, 20 (1), 5–17.
- Scholte, Jan A. 2005: *Globalization: A Critical Introduction*, Basingstoke: Palgrave Macmillan.
- Shift 2013: Stakeholder Engagement and the Extractive Industry Under the OECD Guidelines for Multinational Enterprises.
http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/2013_WS2_1.pdf (30.04.2015).
- SMI 2013: *Tampakan Copper-Gold Project Sustainability Report 2012*, Philippines: SMI & Xstrata Copper.
- SMI n.d.(a): Our Project.
<http://www.smi.com.ph/EN/OurProject/Pages/ProjectDescription.aspx> (27.02.2014).



- SMI n.d.(b): Our SD Performance: Our responses to concerns about human rights.
<http://www.smi.com.ph/EN/OurPerformance/Pages/ResponsetoHumanRightsConcerns.aspx> (28.02.2014).
- SMI n.d.(c): About Us: Our History.
<http://www.smi.com.ph/EN/AboutUs/Pages/OurHistory.aspx> (27.02.2014).
- SMI n.d.(d): About Us: Our Principles and Policies.
<http://www.smi.com.ph/EN/AboutUs/Pages/OurPrinciplesandPolicies.aspx> (26.02.2014).
- SMI n.d.(e): Our SD Performance: Community.
<http://www.smi.com.ph/EN/OurPerformance/Pages/Community.aspx> (26.02.2014).
- SMI n.d.(f): Resettlement.
<http://www.smi.com.ph/EN/Resettlement/Pages/homedefault.aspx> (27.02.2014).
- SMI n.d.(g): Tampakan Copper-Gold Project – Resettlement Fact Sheet.
<http://www.smi.com.ph/EN/Resettlement/Pages/homedefault.aspx> (27.02.2014).
- Steurer, Reinhard 2013: Disentangling governance: a synoptic view of regulation by government, business and civil society, in: *Policy Sciences*, 46 (4), 387–410.
- United Nations Economic Commission for Europe [UNECE] 1998: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf> (30.04.2015).
- United Nations General Assembly 1966a: International Covenant on Civil and Political Rights [ICCPR].
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (11.03.2014).
- United Nations General Assembly 1966b: International Covenant on Economic, Social and Cultural Rights [ICESCR].
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (11.03.2014).
- United Nations Economic and Social Council [ECOSOC] 2005: Report of the United Nations High Commissioner for Human Rights on the sectoral consultation entitled “Human rights and the extractive industry”, 10-11 November 2005. E/CN.4/2006/92, New York.
- United Nations Human Rights Council [UNHRC] 2008: Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. A/HRC/8/5, New York.

- United Nations 2000: United Nations Global Compact.
<https://www.unglobalcompact.org/> (18.06.2015).
- United Nations 2008: United Nations Declaration on the Rights of Indigenous Peoples.
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
(30.04.2015).
- United Nations 2011: Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework. HR/PUB/11/04, New York & Geneva.
- United Nations 2012: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide. HR/PUB/12/02, New York & Geneva.
- Utting, Peter 2002: Regulating business via multistakeholder initiatives: A preliminary assessment, in: UN Non-Governmental Liaison Service (NGLS) & UNRISD (eds): Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide. Geneva.
- Utting, Peter 2005: Corporate Responsibility and the Movement of Business, in: Development in Practice, 3-4, 375–388.
- Valencia, Czeriza 2014: Indophil eyes Glencore stake in Tampakan mine. The Philippine Star, 26.03.2014.
<http://www.philstar.com:8080/business/2014/03/26/1305127/indophil-eyes-glencore-stake-tampakan-mine> (05.11.2014).
- Vogel, David 2006: The Private Regulation of Global Corporate Conduct, in: Working Paper Series 34. Berkley.
- Vogel, David 2010: The Private Regulation of Global Corporate Conduct, in: Business & Society, 49 (1): 68-87.
- Wetherelt, Andrew/Wielen, Klaas Peter van der 2011: Introduction to Open-Pit Mining, in: Peter Darling (ed.): Mining Engineering Handbook, 3rd edition, Society for Mining, Metallurgy, and Exploration, Inc. (SME), 857-877.
- White, Allen L. 2006: The Stakeholder Fiduciary: CSR, Governance and the Future of Boards. Business for Social Responsibility.
<http://www.bsr.org/en/our-insights/report-view/the-stakeholder-fiduciary-csr-governance-and-the-future-of-boards> (12.02.2014).
- World Bank 2009: Oil, Gas and Mining Policy Division. Washington, D.C.: World Bank.
<http://siteresources.worldbank.org/EXTOGMC/Resources/COCPObrochureFINAL.pdf?resourceurlname=COCPObrochureFINAL.pdf> (29.04.2015).





9. List of Abbreviations

CSR	Corporate Social Responsibility
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
ESIA	Environmental and Social Impact Assessment
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
FTAA	Financial and Technical Assistance Agreement
ICMM	International Council on Mining and Metals
IEC	Information, Education and Communication
IFC	International Finance Corporation
ILO	International Labour Organization
ISO	International Organization for Standardization
NCIP	National Commission on Indigenous Peoples
NGO	Nongovernmental Organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	(UN) Office of the High Commissioner for Human Rights
SAP	Structural Adjustment Program
SMI	Sagittarius Mines, Inc.
TNC	Transnational Corporations
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNGP	UN Guiding Principles on Business and Human Rights
WMC	Western Mining Corporation



10. Appendix A

Overview of existing guidance on stakeholder engagement relevant to the extractive sector (adapted from Shift (2013: 24-27))

<p>International Finance Corporation, Performance Standard 1 (as revised in 2012)</p>	<ul style="list-style-type: none"> • “Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project’s environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to affected communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the project’s risks and adverse impacts, and the project’s phase of development.” (Paragraph 25) • Detailed guidance on different components of stakeholder engagement is provided in paragraphs 26 to 36 and Guidance Note 95 to 113. • See also Performance Standard 2 on Labor and Working Conditions and Performance Standard 7 on Indigenous Peoples.
<p>International Finance Corporation, <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets</i> (2007)</p>	<ul style="list-style-type: none"> • “When consultation activities are primarily driven by rules and requirements, they tend to become a one-time set of public meetings, typically around the environmental and social assessment process. This type of consultation rarely extends in any meaningful way beyond the project planning phase, and is seldom integrated into core business activities or measured in terms of its effectiveness in building constructive working relationships. Today, the term “stakeholder engagement” is emerging as a means of describing a broader, more inclusive, and continuous process between a company and those potentially impacted that encompasses a range of activities and approaches, and spans the entire life of a project.” • Part One of the Handbook includes key concepts and principles of stakeholder engagement.



	<ul style="list-style-type: none"> • Part Two of the Handbook addresses integrating stakeholder engagement with the project cycle. • The Appendices contain useful tools and resources for practitioners.
<p>IAP2, <i>Public Participation Toolbox</i> (referenced in IFC Performance Standards)</p>	<ul style="list-style-type: none"> • Overview of a variety of information disclosure and consultation techniques, including tips (“think it through”) and advantages (“what can go right?”) and disadvantages (“what can go wrong?”) for each technique. • Techniques to Share Information. • Techniques to Compile and Provide Feedback. • Techniques to Bring People Together.
<p>ICMM, <i>Sustainable Development Framework</i></p>	<ul style="list-style-type: none"> • Principle 10: Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders: • Report on our economic, social and environmental performance and contribution to sustainable development. • Provide information that is timely, accurate and relevant. • Engage with and respond to stakeholders through open consultation processes. • Additional stakeholder engagement guidance as part of ICMM guidance on: community development; engagement with artisanal and small-scale miners; indigenous peoples; human rights; and grievance mechanisms.
<p>Prospectors and Developers Association of Canada, <i>E3 Plus Framework</i></p>	<ul style="list-style-type: none"> • Principle 5: “Engage Host Communities and Other Affected and Interested Parties” – To interact with communities, indigenous peoples, organizations, groups and individuals on the basis of respect, inclusion and meaningful participation. • The related Guidance Notes provide advice about preparing for engagement, implementing engagement, disclosure of information, issues management and grievance mechanisms, monitoring and reporting, and exploration-specific issues.



<p>Mining Association of Canada, <i>Towards Sustainable Mining - Guiding Principles</i></p>	<ul style="list-style-type: none"> • Aboriginal and Community Outreach Framework (2008) and Protocol (2012). • This protocol provides an indicator of the level of outreach and TSM implementation within Aboriginal and community stakeholders in accordance with TSM principles. • The protocol comprises four performance indicators: community of interest (COI) identification; effective COI engagement and dialogue; COI response mechanism; and reporting. • See also the “Assessing External Outreach Performance” tool.
<p>IPIECA, <i>Improving Environmental and Social Performance: Good Practice Guidance for the Oil and Gas Industry</i></p>	<ul style="list-style-type: none"> • Includes guidance on community engagement: The success of a business can depend on its ability to communicate with the local community, both before operations begin and throughout the project. Companies that interact with local people should be able to respond to their concerns and needs and manage their expectations. • See also additional guidance on: voluntary and involuntary resettlement; free prior and informed consent; stakeholder engagement; migration; urban encroachment; local content; human rights; and grievance mechanisms.
<p>European Commission, Human Rights Sector Guidance Project, <i>Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights</i></p>	<ul style="list-style-type: none"> • The guidance provides advice about stakeholder engagement within the broader human rights due diligence framework. • Stakeholder engagement is part of developing a policy commitment (p. 11). • Stakeholder engagement is part of assessing human rights impact (section II.E). • Incorporating stakeholder perspectives is part of tracking performance on a company’s due diligence (section IV.C). • Identifying stakeholders is part of communicating performance on a company’s due diligence (section V.B.).
<p>International Finance Corporation, Performance Standard 7 on Indigenous Peoples</p>	<ul style="list-style-type: none"> • Paragraph 11: Affected Communities of Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability,



	<p>in addition to the General Requirements of this Performance Standard, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples in the circumstances described in paragraphs 13–17 of this Performance Standard. FPIC applies to project design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples. When any of these circumstances apply, the client will engage external experts to assist in the identification of the project risks and impacts.</p> <ul style="list-style-type: none"> • Paragraph 12: FPIC builds on and expands the process of ICP described in Performance Standard 1 and will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document: (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree. • Definition of FPIC: Guidance Note, paragraphs 24-26. • Application of FPIC: Guidance Note, paragraphs 28-24. • Process of Achieving FPIC: Guidance Note, paragraphs 35-41.
<p>UN Global Compact, United Nations Declaration on the Rights of Indigenous Peoples: A Business Reference Guide (Exposure Draft)</p>	<ul style="list-style-type: none"> • There are points in time at which a business may need to demonstrate that it has received FPIC (for example, as part of a regulatory process, and before starting relevant activities); however, FPIC is not a ‘one off’ exercise. In some circumstances, an indigenous community may be entitled to withdraw the consent that they have previously given, and businesses must ensure that they maintain FPIC throughout the life of a project. This will involve regular engagement with relevant indigenous communities. • The Guide provides an overview of consultation, consent and the project development process.



	<ul style="list-style-type: none"> • The Guide also describes what is needed to implement each element of FPIC (free, prior and informed, consent).
<p>UN Expert Mechanism on Indigenous Peoples Rights, <i>Advice No. 4: Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries</i></p>	<ul style="list-style-type: none"> • Depending on the indigenous peoples’ decision-making processes concerned and the nature of the activity concerned, consent may not always require indigenous peoples to reach a unanimous consensus agreement to the extractive activity for it to proceed. On the other hand, and again dependent on the particular decision-making processes of the indigenous peoples concerned, majority support may also not be adequate. There may be traditional mechanisms that set out other requirements. At the start of a consultation process indigenous peoples should make clear, and agree on, how they will make a collective decision on the extractive activity, including the threshold to indicate there is consent. • The Advice sets out when there are mandatory requirements to obtain indigenous peoples’ consent, when there are contextual requirements to obtain indigenous peoples’ consent, and when there is a requirement of mutual consent, as set out in treaties. • The Advice provides practical advice to States, extractive industry companies and indigenous peoples on how to meet their responsibilities with respect to FPIC.
<p>Boreal Leadership Council, <i>Free Prior, and Informed Consent in Canada: Towards Practical Guidance for Developers and Aboriginal Communities</i></p>	<ul style="list-style-type: none"> • Triggering FPIC early protects developer and communities from potential liabilities. Triggers will vary by scale of project and extent of community impacts. • FPIC is not only attained, but must also be maintained over the life cycle of the project. This may mean that FPIC is negotiated in stages and renegotiated when there are changes. • The BLC discussion paper highlights the requirements for each of the elements of FPIC: free, prior, informed and consent. • It provides advice to developers and communities to contribute to implementing each element of FPIC.



<p>Cathal Doyle and Jill Carino, <i>Making Free, Prior and Informed Consent a Reality: Indigenous Peoples and the Extractive Industry</i> (2013)</p>	<ul style="list-style-type: none">• The [extractive] industry is also taking some initial steps towards seriously tackling the requirement for FPIC. However it has serious legacy issues, has been slow to incorporate the requirement into policy, and has struggled with how to comply with it in practice. Multinational [extractive] corporations continue to engage with indigenous communities in an inconsistent manner and rarely comply with the standards necessary to respect indigenous peoples' rights, interests and well-being. This has resulted in a range of negative social, environmental, cultural, spiritual and economic consequences for indigenous peoples, including threats to the physical and cultural survival of indigenous communities around the world.• Chapter 8 contains general guiding principles and recommendations to mining companies, indigenous peoples, states, the financial sector, civil society organizations and the international community.
--	---

Recently Published INEF Reports

- Marie-Luise Mußenbrock:** A (Mis)Alignment of Governance Structures? The Two Water Concessions in Metro Manila. Duisburg (INEF Report, 108/2013), 47 pp.
- Herbert Wulf:** India's Aspirations in Global Politics – Competing Ideas and Amorphous Practices. Duisburg (INEF Report 107/2013), 39 pp.
- Daniel Lambach/Felix Bethke:** Ursachen von Staatskollaps und fragiler Staatlichkeit: Eine Übersicht über den Forschungsstand. Duisburg (INEF-Report 106/2012), 48 S.
- Jan Hanrath:** Transnationale Migrantengruppen und der Transport von Konflikten – Das Beispiel Türken und Kurden in Berlin. Duisburg (INEF-Report 105/2012), 44 S.
- Christian Bueger/Jan Stockbrügger/Sascha Werthes:** Strategische Fehler der Pirateriebekämpfung. Somalia, Peacebuilding und die Notwendigkeit einer umfassenden Strategie. Duisburg (INEF-Report 104/2011), 44 S.
- Hippler, Jochen:** Strategische Grundprobleme externer politischer und militärischer Intervention – Unter besonderer Berücksichtigung der Krisensituationen des Nahen und Mittleren Ostens. Duisburg (INEF-Report 103/2011), 56 S.
- Werthes, Sascha/Heaven, Corinne/Vollnhals, Sven:** Assessing Human Insecurity Worldwide. The Way to a Human (In)Security Index. Duisburg (INEF Report 102/2011), 62 pp.
- Meyns, Peter/Musamba, Charity (eds.):** The Development State in Africa. Problems and Perspectives. Duisburg (INEF Report 101/2010), 68 pp.
- INEF (Hrsg.):** Sonderheft. Entwicklung, Frieden und Global Governance: Ein Rückblick auf 100 Ausgaben des INEF-Reports, 27 S.



Single Copies can be ordered from:

Institute for Development and Peace, University of Duisburg-Essen,
Faculty of Social Sciences, D-47048 Duisburg.

Hardcopies can be ordered for 3.00 Euro (Germany) or 5.00 Euro (Europe) each.

Order forms are available on our homepage.

All INEF Reports can be downloaded for free from our homepage:

<http://inef.uni-due.de>

The Institute for Development and Peace (INEF)

The Institute for Development and Peace (INEF), which was founded in 1990, is an institute of the University of Duisburg-Essen (Faculty of Social Sciences) with a strong focus on policy-related and policy-relevant research. It closely collaborates with the Development and Peace Foundation (SEF), Bonn, established in 1986 at the initiative of former German chancellor and Nobel peace prize winner Willy Brandt.

INEF combines basic research with applied and policy-related research in the following areas: Global Governance and Human Security, Fragile States, Crisis Prevention and Civilian Conflict Management, Development, Human Rights and Corporate Social Responsibility.

The specific approach of INEF, as the only German research institute to combine basic with applied research in peace and development research, is also reflected in the range of third-party funding bodies. INEF carries out research programs and systematically explores available international expertise and world reports, often in cooperation with national and international partners. INEF also conducts smaller projects for NGOs and NGO networks. The institute is integrated in a strong and viable international research network.

Directors and Executive Board

Director: Prof. Dr. Tobias Debiel

Executive Director: Dr. Cornelia Ulbert

Members of the Executive Board: Prof. Dr. Tobias Debiel (spokesperson); Prof. Dr. Christof Hartmann (acting spokesperson); Prof. Dr. Karl-Rudolf Korte (Dean of Faculty of Social Sciences); Christian Scheper; Mariam El-Zein; Ursula Schürmann; Prof. Karen Shire PhD.

The INEF Report series

INEF Report is a series that appears at irregular intervals. It publishes major findings from the institute's ongoing research projects as well as overview studies on academic and policy debates concerning global issues. INEF Reports are primarily addressed to the research community and students of international relations, but also try to reach out to policy-makers interested in relevant scholarly results.



UNIVERSITÄT
DUISBURG
ESSEN

Open-Minded

FAKULTÄT FÜR
GESELLSCHAFTSWISSENSCHAFTEN

INEF-Report 109/2015

Institute for Development and Peace (INEF)
Lotharstr. 53 D - 47057 Duisburg
Telefon +49 (203) 379 4420 Fax +49 (203) 379 4425
E-Mail: inef-sek@inef.uni-due.de
Homepage: <http://inef.uni-due.de>

ISSN 0941-4967