



# A Missed Opportunity: The Consequences of Failing to Engage Rights-Holders Affected by Mining Company Activities

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# Executive Summary

This policy brief sets out the case for legally requiring companies – particularly mining companies – to engage meaningfully with affected rights-holders. Such a requirement is important not only to protect this group, but also to prevent, mitigate, and rectify operational, reputational, legal, and financial risks and impacts to businesses.

Failure to require appropriate rights-holder engagement in national and international laws will lead to continued human rights violations by states, human rights abuses by companies, and consequently business costs to both companies and their investors.

It is suggested that the most effective way to legally require meaningful engagement by companies with affected rights-holders is through including relevant provisions in both corporate law mechanisms and the mandatory human rights and environmental due diligence (mHREDD) legislation that is emerging globally.



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# Introduction

**There is a growing awareness among both policymakers and economic actors, including investors and mining companies, that environmental, social, and governance (ESG) issues can be financially material. These actors increasingly understand the importance of human rights – seen largely as part of the social component of ESG – to be a financial consideration.**

The UN Guiding Principles on Business and Human Rights<sup>1</sup> – unanimously endorsed by the UN Human Rights Council in 2011 – make clear that business enterprises have a responsibility to respect human rights regardless of their business imperatives. This responsibility to respect human rights includes meaningful stakeholder engagement with rights-holders affected by business activity such as workers and communities.

In the past ten years, human rights in the mining industry have mainly been viewed through the lens of a just transition (see Box 1). While major mining companies commit to engaging with affected rights-holders and often insist their engagement with these groups is appropriate and meaningful, major failures in engaging rights-holders in the past ten years suggest otherwise as exemplified by tailings dam collapses (see Box 2) and destruction of cultural property. Appropriate consultation with affected rights-holders will help mining companies to identify human rights concerns early which can in turn help to prevent and mitigate their causing, contributing to, or being linked to human rights abuses.

## Box 1

### A Just Transition

A just transition, sometimes called a ‘just energy transition,’ is the idea that any economic shift toward environmentally-friendly technologies and practices will only be successful with the support of social actors, including workers, communities, and consumers. The just transition is perceived and acted on differently in different regions and countries. For example, in Europe and the US, the focus of this transition is on green technology and having social actors sign onto technological developments. In other countries and regions, such as South Africa and the African continent more broadly, the focus is on meeting the energy needs of local populations while considering if and how to deploy environmentally-friendly development policies and approaches.

## Box 2

### Tailing Dams

Tailings dams are where mining companies put their mining waste. Typically, the waste is mixed with water, creating a sludge that creates mudslides if the dams collapse.

<sup>1</sup> [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

# Policy Context

## The Business Challenge

Investor engagement with rights-holders affected by mining companies' activities is critical to understanding the viability of mining companies, and increasingly to the viability of a successful green energy transition. This viability is dependent on mining company production of transition minerals.

Operationally, affected rights-holders can hold strikes and protests that lead to shutdowns and consequently lost production and profits. Reputationally, affected rights-holders can lobby investors and governmental bodies who can, respectively, withhold finance and legal licences to operate. Legally, companies often face litigation worth billions of dollars that could be re-invested in the company or paid as dividends to investors. As a result, there often are significant financial consequences for companies who fail to engage properly with rights-holders, with knock-on financial consequences for investors. However, these consequences tend not to be highlighted or explored by either the companies or investors, presumably for fear of leading to further financial impacts.

For example, international mining companies, BHP and Vale, have faced a large amount of litigation in relation to the collapse of a tailings dam owned by their joint venture, Samarco. This litigation has arisen in large part because both companies failed to engage meaningfully with affected rights-holders both prior to and following the dam collapse. If two pieces of litigation alone - one in Brazil and one in the UK - succeed, BHP and Vale may be liable to pay compensation amounting to around 60 percent of BHP's market capitalisation and around two and a half times Vale's market capitalisation.<sup>2</sup>

**“Company engagement is important but provides only one perspective on the companies' ESG performance, which increasingly has consequences for these companies' financial performance.”**

## The Economic Challenge

Currently, investors tend to engage only with investee mining companies, not affected rights-holders, on ESG (including human rights) issues. Company engagement is important but provides only one perspective on the companies' ESG performance, which increasingly has consequences for these companies' financial performance, as set out above. Because mining companies provide critical minerals used for green technology, such as electric vehicles and solar panels, their financial performance has important economic implications at the global level (although some affected community members dispute the need for new mines to combat climate change). It is therefore critical that mining companies recognise ESG factors that are financially material as part of a just energy transition.

A just energy transition includes respecting rights-holders—workers, communities, and consumers—who experience both the positive and negative impacts of mining company operations. Effective engagement with rights-holders by both companies and investors facilitates an understanding of how these economic actors can best respect human rights in the course of this transition. Failure of companies and investors to contribute to a just energy transition, including through meaningful engagement with rights-holders, could compromise the viability of mining companies and a just energy transition globally.

<sup>2</sup> These figures are based on the author's calculations using media articles estimating the compensation payments paid and/or requested by the claimants, primarily this Financial Times article: <https://www.ft.com/content/2c8c4fa5-b1a1-4c99-b984-80c54452c0fc>

## The Legal Challenge

A number of laws and policies at the international and domestic level fail to create incentives for mining companies to engage meaningfully with their affected rights-holders. One example of poor incentives in corporate law includes the structures permitted for joint ventures (see Box 3) between mining companies. These structures create governance gaps on human rights and allow shareholding companies to avoid their responsibilities to respect human rights. For example, shareholder partners often claim that the operating partner in a joint venture is solely responsible for respecting human rights affected by the project.

An example of poor incentives at the international level has been international finance institutions' structural adjustment programmes that prioritise economic policy rather than human rights outcomes in the assessment of state funding requests (see Box 4).

International human rights laws and standards have the potential to fill these governance gaps.<sup>3</sup> However, these tools have significant gaps in coverage themselves in relation to stakeholder protections. At the international level, free prior and informed consent (FPIC) applies to Indigenous People but not to other affected rights-holders. *The UN Guiding Principles on Business and Human Rights (UNGPs)* include standards of corporate accountability in relation to rights-holders (see Box 5).<sup>4</sup> However, the UNGPs are voluntary, and some commentators have suggested that they require a dedicated section (fourth pillar) on this issue.<sup>5</sup> The UNGPs were also not originally drafted to cover climate change and environmental issues, though the UN Working Group on Business and Human Rights has since clarified that they do cover these areas.<sup>6</sup>

### Box 3

## Joint Ventures

Joint ventures are projects or operations formed through a partnership between two or more investee companies, often multinational corporations. They can operate in various ways. For example, two companies can own a joint venture project, say, 80%-20% with one of the investee companies operating the project and the other being a non-operating partner. Alternatively, the companies could invest 50%-50% to set up another company that is the project operator.

The latter scenario is the case with the Mariana tailings dam collapse in Brazil, where BHP and Vale set up a joint venture company—Samarco—which operated the tailings dam that collapsed in 2015. BHP and Vale have largely sought to avoid accountability and responsibility, pointing to Samarco as being responsible for the collapse. They cite an entity established by both companies and Brazilian authorities—the Renova Foundation—as having responsibility for resettlement, reparations, and compensation of the victims of the collapse.

### Box 4

## Structural Adjustment Programs

The World Bank and the International Monetary Fund have historically required that countries undertake economic policy changes—often including privatisations—in order to obtain loans and aid, respectively, for their economic development programmes. These structural adjustment requirements have been criticized for focusing more on Western-driven economic imperatives than on collaborating with local populations to determine effective, locally-prescribed development initiatives.

3 See ILO Convention 169, [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169,Document](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,Document)

4 UN Guiding Principles on Business and Human Rights, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

5 Melish, T. J. and E. Meidinger. 'Protect, Respect, Remedy, and Participate: 'New Governance' lessons for the Ruggie Framework. in *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, R. Mares (ed.), The Raoul Wallenberg Institute Human Rights Library, Vol. 39, 1 January 2012.

6 <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>

At the domestic level, most countries where natural resources are extracted have laws requiring the mining companies operating within their jurisdictions to consult with affected rights-holders. However, these consultations often fail to respect the rights-holders' needs and wishes in line with international human rights law. More broadly, in the UK, although section 172 of the Companies Act 2006 requires companies to account for ESG issues, including community impacts, the statute does not require engagement with community members. This section also lacks effective enforcement mechanisms.

To help fill governance gaps, the European Union has recently passed the Corporate Sustainability Due Diligence Directive (CSDDD). This law will require companies, including mining companies based in Europe and to an extent those domiciled elsewhere, to account for human rights and environmental practices in their supply chains and value chains to a certain degree. The EU law follows on from similar laws in France and Germany, as well as laws targeting specific human rights issues, such as the UK and Australian Modern Slavery Acts, and the California Transparency in Supply Chains Act.

Some institutional investors have called on the UK Parliament to consider legislation similar to the EU's CSDDD.<sup>7</sup> In doing so, it should consider not only how such legislation would aid its trading relationship with Europe and EU member states, but also how rights-holders' voices can and should be addressed in the human rights and environmental due diligence process. By requiring rights-holders' input, the UK can both fulfil its obligation to respect and protect human rights and create the conditions for more sustainable businesses in the context of the green energy transition. However, to achieve this goal, it must harmonise its efforts with other jurisdictions in order to avoid 'forum shopping', where companies seek jurisdictions with legal regimes that permit human rights failings.

**“By requiring rights-holders' input, the UK can both fulfil its obligation to respect and protect human rights and create the conditions for more sustainable businesses in the context of the green energy transition.”**

## Box 5

### The UN Guiding Principles on Business and Human Rights.

The UNGPs, as they are known, are overseen by the UN Working Group on Business and Human Rights. They are built on a three pillar framework. The first pillar calls on states to protect human rights, including from adverse human rights impacts stemming from business conduct. The second pillar calls on business enterprises to respect human rights, in part through undertaking appropriate human rights and environmental (as opposed to corporate) due diligence. A third pillar calls on both states and business enterprises to provide access to remedies for victims of corporate behaviour that leads to adverse human rights impacts.

The human rights and environmental due diligence process should be undertaken to determine if businesses are causing, contributing to, or directly linked to 'potential or actual adverse human rights impacts.' This process is sometimes referred to as 'knowing and showing.' Part of the 'knowing' is speaking to affected rights-holders, such as workers and community members affected by business operations. 'Showing' includes demonstrating to a range of stakeholders, including affected rights-holders, what businesses are doing to respect human rights and where they are falling short.

<sup>7</sup> <https://investorsforhumanrights.org/april-2024-bhrea-business-statement-uk-human-rights-due-diligence>

# What are the Real World Consequences of Failure to Engage Appropriately on Human Rights?

## For Communities

In November 2015, the Fundão tailings dam at the Samarco mining complex – a joint venture between BHP and Vale – collapsed in Mariana, Brazil.<sup>8</sup> The dam collapse killed 19 people on the day and caused what has been called the worst environmental disaster in Brazilian history.<sup>9</sup> Engagement with affected community members from Mariana and securities litigation<sup>10</sup> in the US suggest that the companies involved knew about the risks to the dam but did not act on this information. These communities complain that the companies do not engage with them effectively, either to prevent future dam collapses or to ensure appropriate company provision of resettlement, reparations, and compensation.<sup>11</sup> Affected rights-holders also point to a deficient method for identifying victims who should receive reparations and compensation.

In January 2019, the Córrego do Feijão dam owned by Vale collapsed in Brumadinho, Brazil killing 272 people.<sup>12</sup> The majority of those dead were workers crushed by mud when the dam collapse razed the worker canteen. There are allegations that Vale had been notified of the danger of having the canteen in the mud path in the event of a possible dam collapse but did nothing. Community members in Brumadinho state that they have not been included in the determination of reparations and compensation measures by the company. Some affected individuals also state that they have not been recognised as victims by the company.

In May 2020, Rio Tinto blew up a 46,000 year old cultural heritage site at Juukan Gorge in Western Australia.<sup>13</sup> The destruction stemmed from a failure to engage appropriately with a local Indigenous group, the Puutu Kuntj Kurrma and Pinikura people (PKKP). All parties point to deficient national law regarding appropriate company-community consultation standards.<sup>14</sup>

Adverse human rights impacts to community members affected by mining activities caused by these disasters include:

- The right to health
  - death and injury
  - anxiety and depression
  - deficient measures in relation to tailings dam safety
  - safety and security problems for local community members
- The right to a clean and healthy environment
  - loss and contamination of natural water resources and biodiversity
  - poor air quality
  - lack of appropriate preventive measures to ensure no further tailings dams collapses<sup>15</sup>, among other impacts.
- The right to housing: loss of housing
- The right to an adequate standard of living: loss of livelihoods
- The right to remedy: lack of recognition for some victims of tailings dam collapses, and
- The right to a cultural life: loss of community and cultural facilities

8 <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0133/>

9 <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0133/>

10 <https://casetext.com/case/in-re-bhp-billiton-ltd-sec-litig>

11 This information is based on the author's continuing engagement with individuals affected by the dam collapse.

12 [https://lapforum.org/wp-content/uploads/2023/05/LAPFF\\_MINING\\_INVESTMENT-RISK-REPORT\\_FINAL.5thjune-1.pdf](https://lapforum.org/wp-content/uploads/2023/05/LAPFF_MINING_INVESTMENT-RISK-REPORT_FINAL.5thjune-1.pdf)

13 <https://www.theguardian.com/australia-news/2021/may/24/a-year-on-from-the-juukan-gorge-destruction-aboriginal-sacred-sites-remain-unprotected>

14 Parliament of the Commonwealth of Australia. A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge, October 2021, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Northern\\_Australia\\_46P/CavesatJuukanGorge/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Northern_Australia_46P/CavesatJuukanGorge/Report)

15 The Samarco tailings dam collapse in Mariana, Brazil has been described as the worst environmental disaster in Brazilian history.



# What are the Real World Consequences for Mining Companies and Investors when Mining Companies Fail to Engage Appropriately on Human Rights?

Companies and investors are facing negative financial consequences stemming from a failure to engage properly with affected rights-holders. These consequences are set out below.

## Lack of Alignment with International Human Rights and Environmental Standards is Creating Operational, Reputational, Legal, and Financial Risk for Mining Companies

BHP, Vale, and Rio Tinto have all faced operational consequences of failing to engage properly with affected rights-holders, including resignations of then Rio Tinto Chair and CEO.<sup>16</sup> Operations at Samarco were halted for five years while BHP, Vale, and Samarco worked to rectify damage caused by the tailings dam collapse.<sup>17</sup> Rio Tinto's destruction of Juukan Gorge led to a halt of some mining operations in the Pilbara, Western Australia not only for Rio Tinto, but also for other mining companies, for a time after the event.<sup>18</sup> All three companies continue to face reputational damage as a result of these disasters.

Not only do the company engagements with affected rights-holders fail to align with human rights standards such as obtaining free prior and informed consent from Indigenous People, but the inadequacy of these engagements is having severe legal and financial consequences for the companies. For example, pending appeal, BHP and Vale have recently been found liable for damage worth \$9.7 billion in Brazil for their role in the Mariana tailings dam collapse.<sup>19</sup> Both companies are also currently facing litigation in the UK in which over 700,000 Brazilian claimants (BHP states that the number is now 600,000) are collectively seeking around £36 billion from the companies for an alleged failure to provide adequate reparations to affected rights-holders.<sup>20</sup> Additionally, BHP is facing investor litigation in Australia in relation to the Samarco tailings dam collapse.<sup>21</sup> The Australian litigation claims that BHP's stock price 'fell by 22% on the Australian Securities Exchange, and by 23% on the London Stock Exchange and Johannesburg Stock Exchange' in the month after the November 2015 Mariana dam collapse.



16 <https://www.bbc.co.uk/news/business-56261514>

17 <https://www.mining.com/samarco-resumes-operations-5-years-after-fundao-dam-tragedy/>

18 <https://www.theguardian.com/australia-news/2020/jun/11/bhp-agrees-not-damage-40-aboriginal-heritage-sites-without-consulting-traditional-owners-pilbara>

19 <https://www.theguardian.com/world/2024/jan/26/brazil-dam-collapse-mariana-bhp-vale-samarco-15bn-damages-payout>

20 <https://www.stewartslaw.com/news/largest-ever-group-action-given-green-light-bhp-refused-permission-to-appeal-mariana-dam-claim/>

21 <https://www.bbc.co.uk/news/world-australia-44919859> ; <https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/bhp-class-action/>



## Developing Litigation and Legislation will Require Mining Companies to Develop and Implement Appropriate Human Rights and Environmental Due Diligence Systems

In the UK, there have been recent rulings against *Vedanta*<sup>22</sup> and *Shell*<sup>23</sup> that have moved the law toward corporate accountability for extraterritorial impacts of subsidiaries and business partners. Passage of the EU CSDDD, which includes general procedural requirements on stakeholder engagement, and the expected consideration of similar due diligence legislation in the UK suggests that both courts and policymakers are recognising the legal and policy gaps that exist in transnational business environments. However, it is very difficult to legislate for corporate accountability because of challenges in collecting evidence and in enforcing rulings in relation to transnational business contexts. Ensuring that such legislation mandates engagement with rights-holders affected by not only mining companies, but any company that can or does have adverse human rights and environmental impacts, can help significantly to clarify through rights-holder testimony where legal enforcement is and is not working.

## The Current Auditing Framework Creates Conflicts of Interest that Can Compromise Human Rights and Environmental Protection

Another major concern in relation to the Brumadinho dam collapse was that Vale had hired the same company to both audit the dam and consult with Vale, leading to conflicts of interest that compromised the dam's safety.<sup>24</sup> There are concerns about lack of clarity in rules regarding the separation of auditing and consultancy functions, leading to conflicts of interest in Brazil, but this legal gap is a concern more broadly. Beyond conflicts of interest concerns, there is a worry that lack of clarity in such rules can lead to human rights and environmental violations. Consequently, some commentators have called for effective consultation with affected rights-holders during audits to ensure that adequate, complete information is informing mining company actions to prevent, mitigate, and redress human rights and environmental violations which they cause, or to which they contribute or are directly linked.<sup>25</sup>

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22 <https://www.leighday.co.uk/news/cases-and-testimonials/cases/vedanta/>

23 <https://www.supremecourt.uk/cases/uksc-2018-0068.html>

24 <https://www.ecchr.eu/en/case/the-safety-business-tuev-sueds-role-in-the-brumadinho-dam-failure-in-brazil/>

25 [https://lapfforum.org/wp-content/uploads/2023/05/LAPFF\\_MINING\\_INVESTMENT-RISK-REPORT\\_FINAL\\_5thjune-1.pdf](https://lapfforum.org/wp-content/uploads/2023/05/LAPFF_MINING_INVESTMENT-RISK-REPORT_FINAL_5thjune-1.pdf)

# What is Being Done to Address this Problem?

Some institutional investors speak directly to community members about how mining companies are affecting local communities (see Box 6). These investors consistently engage with community members to receive updates about community experiences with mining companies, and to share with community members what steps investors have taken on the communities' behalf. This approach includes presenting mining companies with community expectations about how mining companies need to improve their human rights and environmental practices. However, most investors do not yet engage with community members to discuss the human rights impacts of mining companies.

## Box 6

### LAPFF Engagement with Communities

Since 2019, the Local Authority Pension Fund Forum (LAPFF) has been engaging with community members affected by mining companies. These engagements led LAPFF to commission a report on mining and human rights from an investor perspective. This report sets out the international human rights legal framework, how it applies to mining companies, and areas in which mining companies are failing to respect human rights in line with their commitments to uphold the UN Guiding Principles on Business and Human Rights.

These engagements with affected rights-holders also led LAPFF to visit Brazil so that it could hear about the impacts of mining on their communities first hand from affected community members. A subsequent report and video commissioned by LAPFF outlined how three mining companies were failing to respect human rights in three communities—Conceição do Mato Dentro, Brumadinho, and Mariana. These materials were based on a two and a half week visit with community members in the three communities, a two day visit with the Vale Chair at the time to affected communities in Mariana and Brumadinho, a day visit with the BHP—Vale joint venture—Samarco—that was responsible for the Mariana tailings dam collapse, and meetings with Brazilian investors and Vale in relation to the dam collapses.

The report was then used by lawyers pursuing lawsuits against BHP and Vale in relation to the Mariana tailings dam collapse. It was also cited extensively in a UK parliamentary debate on the extraterritorial application of laws to hold corporations to account for their human rights impacts. The video was shown at the UN Forum on Business and Human Rights as an example of how investors can press their investee companies to improve their human rights practices.

# Recommendations

## UN Working Group on Business and Human Rights

- **Consider adding a fourth pillar to the UNGPs on stakeholder engagement** with affected rights-holders.
- **Take steps** to ensure that the UNGPs appropriately include environmental rights.
- **Issue guidance** on appropriate rights-holder engagement for companies and investors, especially in relation to FPIC.
- **Prioritise country visits** where affected rights-holders are experiencing human rights and environmental abuses as a result of poor corporate conduct.

## Legislators

- **Liaise with rights-holder representatives**—and where possible rights-holders themselves—to understand how best to build rights-holder voices into legal protections for human rights and the environment.
- **On the back of such engagement, consider how best to build a requirement to obtain meaningful rights-holder engagement** into any human rights and environmental due diligence legislation deliberated and passed in the UK and other jurisdictions.
- **Enshrine the FPIC standard into domestic law**, and define what a similar standard would look like for non-Indigenous rights-holders.
- **Incorporate a requirement to engage meaningfully with affected rights-holders** in any legislation aimed at facilitating a just energy transition.
- **Enact legislation mandating the separation of consulting and auditing functions** in order to prevent conflicts of interest and facilitate stronger human rights (including health and safety) protections in relation to company operations and ensure that affected rights-holders are consulted in the audit process.

- **Coordinate with other jurisdictions** to harmonise legal standards on extraterritoriality relating to corporate accountability for human rights and environmental impacts in order to prevent corporate forum shopping.
- **Enact corporate reporting legislation** that requires UK companies to disclose independent human rights impact assessments, including testimonials from a representative sample of rights-holders, so that investors have more complete information on which to undertake company engagements, investment decisions and to use their leverage in promoting human rights and environmental protection by investee companies.

## Investors

- **Recognise** that human rights abuses can be financially material.
- **Build engagement with affected rights-holders**—including workers and communities—into investor research processes, including relevant data providers and indices.
- **After having conducted appropriate human rights and environmental due diligence, work with human rights and investment experts** to translate qualitative information into investment-relevant information that can help to assess if a human rights violation is financially material.
- **Engage in continuous, two-way dialogue** with affected rights-holders to monitor whether investee companies are or are not improving their human rights and environmental practices.
- **Where investee companies are failing to improve their human rights** and environmental practices, use leverage to press for these improvements, including through use of collaborative engagements, press releases, shareholder resolutions, and where no other options are effective, divestment.

## Industry Bodies

- **Promote human rights and environmental due diligence** in line with the UN Guiding Principles among the membership.
- **Emphasise that this due diligence must include accurate stakeholder mapping** and continuous, two-way engagement with affected rights-holders.
- **Ensure that national definitions of free prior and informed consent** are aligned with international human rights law standards and endorse free prior and informed consent as a best practice in relation to communities that are not comprised of Indigenous People.
- **Engage with affected rights-holders**, including those critical of mining companies, and integrate their feedback into the body's policies and procedures.
- **Monitor member engagements** with affected rights-holders and ensure that those members not undertaking effective and meaningful engagement with rights-holders can be and are excluded from membership after an appropriate assessment of their conduct.
- **Publish a list of members** that are and are not adhering to effective and meaningful engagement with rights-holders.

## Companies

- **Undertake effective stakeholder mapping** to identify all relevant affected rights-holders.
- **Engage independent bodies** to conduct human rights and environmental impact assessments through which the companies do not influence the design, implementation, or reporting of the assessments.
- **Ensure that effective and meaningful engagement is undertaken** with all affected rights-holders, including those who oppose the company's actions.
- **Include rights-holder input**, including input from critical rights-holders, into company decision-making.
- **Refrain from discrediting rights-holder input** or employing 'divide and conquer' tactics to diffuse worker or community input.
- **Refrain from creating obstacles to freedom of association** and collective bargaining, in line with international human rights law.
- **Accept responsibility and accountability for human rights abuses** by all joint venture partners, suppliers, and business partners.
- **Monitor and enforce company human rights and environmental conduct** and that of value chain partners continuously, including through effective, independent operational-level grievance mechanisms.
- **Build effective enforcement provisions** for value chain partners failing to adhere to appropriate human rights and environmental standards into business contracts.
- **Publish value chain contracts** and those value chain partners who are released from contracts on the basis of poor human rights and environmental practices.

# Key References and Further Reading

## Key References and Further Reading

[ILO Convention No. 169](#)

[European Union Corporate Sustainability Due Diligence Directive](#)

[UN Declaration on the Rights of Indigenous People](#)

[The UN Guiding Principles on Business and Human Rights](#)

[OECD Due diligence guidance on stakeholder engagement in extractive industries](#)

[Local Authority Pension Fund Forum, Mining and Human Rights: An Investor Perspective, April 2022.](#)

[Local Authority Pension Fund Forum, Understanding Investment Risk in the Mining Sector: Brazil. May 2023.](#)



## About the Author

Lara has worked in business and human rights for 25 years. She began her career with a third-party commercial auditing firm where she inspected factories around the world for human rights and environmental abuses. Part of the auditing process involved interviewing workers about their experiences in the workplace. Lara then worked with corporate stakeholders on their corporate social responsibility (CSR) programmes through various CSR consultancies before becoming a Research Fellow in Business and Human Rights at the British Institute of International and Comparative Law (BIICL). In this position, she engaged with corporate and legal stakeholders in relation to their implementation of the UN Guiding Principles on Business and Human Rights. Since working at BIICL, Lara has worked with investors on how to consider human rights as part of their investment analyses. This work with investors has included the initiation of a workstream to have investors speak directly with community members affected by mining companies in which they invest.

# Recent Mining Disasters and their Impacts

Company	Country	Date	Human Rights and Environmental Impact	Company Impact
Samarco (jointly owned by BHP and Vale)	Brazil - Mariana	November 2015	<ul style="list-style-type: none"> <li>• 19 people dead</li> <li>• Worst environmental disaster in country's history</li> <li>• Alleged failure to engage appropriate with affected rights-holders results in continuing delay to reparations, compensation, and resettlement</li> </ul>	<ul style="list-style-type: none"> <li>• Operational disruption</li> <li>• Reputational damage</li> <li>• Multi-billion pound lawsuits on-going</li> <li>• Existing and potential financial penalties large relative to company market capitalisation</li> </ul>
Vale	Brazil - Brumadinho	January 2019	<ul style="list-style-type: none"> <li>• 272 people dead</li> <li>• Loss of livelihoods and cultural resources, in part due to on-going water and soil contamination</li> <li>• Lack of comprehensive identification of victims</li> <li>• Alleged failure to engage appropriately with affected rights-holders resulting in insufficient reparations and compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Operational disruption</li> <li>• Reputational damage</li> <li>• Criminal charges for Vale executive members thought to be linked to the dam collapse</li> <li>• Financial settlement of \$7 billion</li> </ul>
Rio Tinto	Australia - Pilbara	May 2020	<ul style="list-style-type: none"> <li>• Destruction of 46,000 year old cultural heritage site</li> <li>• Inadequate free prior and informed consent exercised</li> </ul>	<ul style="list-style-type: none"> <li>• Operational disruptions, including CEO, executives, and Chair forced to resign</li> <li>• Continuing reputational damage resulting in reduced social license to operate</li> <li>• Australian Parliamentary hearings and report on the destruction</li> <li>• Mining stoppages in the Pilbara that extended beyond Rio Tinto's operations</li> </ul>