Negotiating "meaningful participation" for Indigenous peoples in the context of mining

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Abstract

Purpose – *This paper aims to explore the importance of meaningful participation for Indigenous peoples within the complex and highly political context of mining and mineral extraction. The aim is to consider the multi-dimensional nature of the mining context that takes into account the discursive landscape that frames the often disparate perspectives of corporate, state and Indigenous communities.*

Design/methodology/approach – *The paper is a conceptual offering that examines the complex environment within which "meaningful participation" between mining corporates and Indigenous communities operate.*

Findings – *This paper highlights the multi-dimensional nature of a proposed relationship between the mining corporates, the state and the Indigenous Māori community within New Zealand. The facilitation of "meaningful participation" requires that any negotiated agreement is undertaken within a framework of meaning that makes sense to the Indigenous community, in addition to the appropriate legislative and corporate initiatives to be in place.*

Originality/value – *The paper highlights the complex considerations that must be included in any form of negotiation between mining corporates and Indigenous peoples to achieve meaningful participation in the form that it was intended under international accords. While recognising the different contextual circumstance of Indigenous peoples around the world, this paper illustrates a pathway towards meaningful participation that takes into account economic, socio-cultural and environmental variables.*

Keywords *Indigenous communities, Corporate social responsibility, Extractive industries, Free, Prior and informed consent, Māori worldview, Social licence to operate*

Paper type *Conceptual paper*

Glossary

Te reo Māori	= English
Hapu	= clan
Iwi	= Māori tribal groups
Kaitiaki	= guardian
Kaitiakitanga	= guardianship, preservation, conservation and protection
Ki uta ki tai	= from land to sea
Mana whenua	= Māori who have who have power and authority in particular regions
Ōtākou	= Otago
Pounamu	= greenstone
Rangatiratanga	= chieftainship, leadership and governance
Rohe	= region
Rūnaka	= an assembly, regional council
Takiwā	= area
Tāngata tiaki	= people with guardianship
Tangata whenua	= people of the land
Tiakitanga	= ancestral obligation to collectively sustain, guard, maintain, protect and enhance mauri

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Te Waipounamu = the South Island of New Zealand
Tiriti o Waitangi = the Treaty of Waitangi
Whanaungatanga = Relationships

Introduction

The international community has collectively recognised Indigenous peoples' rights to participation in the environmental management of resource use and extraction on their traditional lands (O'Faircheallaigh and Corbett, 2005). At the very least, the defining role of agreements such as the International Labour Organization Convention 169 and the UN Declaration on the Rights of Indigenous Peoples is for signatories to recognise and promote Indigenous people's rights to the integrity of their cultural identity, traditional lands and territories and to self-determination (O'Faircheallaigh and Corbett, 2005; Whiteman and Mamen, 2005; Erueti, 2015). More broadly, they should provide for Indigenous peoples to "meaningfully participate" in development plans, which assures informed consent prior to decisions affecting their rights/interests and to follow their own visions of development (which may not be synonymous with Western conceptions of economic development) (Whiteman and Mamen, 2005). This approach suggests that any form of agreement and effort towards meaningful participation must:

- be informed by the Indigenous communities' values, knowledge frameworks and aspirations for intergenerational development; and
- provide for Indigenous peoples to meaningfully participate in development plans from the earliest time possible, which assures informed consent prior to decisions affecting their rights/interests (O'Faircheallaigh, 2013; Owen and Kemp, 2013).

However, in the context of mining and mineral extraction, the notion of engagement and participation in decision-making is most often couched from the perspective of three main constituents – the state, the mining industry and its corporates and the many different stakeholders that make up the community, including Indigenous peoples. The reality, however, is very different for most (if not all) Indigenous communities, as mining and resource extraction has been occurring on their landscapes with little or no consultation, let alone participation in decisions that have significantly impacted their lives, identities and lands.

The aim of this paper, therefore, is to highlight the multi-dimensional nature of meaningful participation for Indigenous people in the context of mining that takes into account the discursive landscape that frames the often disparate perspectives of corporate, state and Indigenous communities. In this instance, we consider the context facing New Zealand's Indigenous Māori communities, as tangata whenua, (people of the land), and their relationship with the New Zealand government and mining corporations to explore the notion of meaningful participation (Erueti, 2015; Ruckstuhl *et al.*, 2014). New Zealand is a developed nation with a bi-cultural legislative infrastructure, founded on the signing of Tiriti o Waitangi, the Treaty of Waitangi, on the 6 February 1840, which formed the basis for British settlement and government. Therefore, Māori are formally recognised as the Indigenous peoples of the land, and the specific relationship between Māori and the state is outlined in a series of enacted legislation (Maaka and Fleras, 2005). The New Zealand market economy is currently dominated by exports of dairy products, meat and wine, along with tourism, but mineral exploration has emerged as a critical driver for a more productive and competitive economy (Ministry of Business Innovation and Employment, 2015). The increasing intensity surrounding mining and minerals exploration in New Zealand has unsurprisingly drawn Māori interest, as government policy and corporate overtures have asked Māori collectively and individually to develop responses, particularly for those sites of exploration situated in traditional tribal rohe regions (Ruckstuhl *et al.*, 2013). For Māori, at the heart of any response, the importance of recognising Māori values and ensuring genuine influence in the decision-making processes is paramount (Ruckstuhl *et al.*, 2014; Erueti, 2015), but as history reflects this is difficult to achieve.

Under pressure from the international community, the increasing political presence of Indigenous peoples around the world and the potential for extra financial costs and litigation, project closures, violence and damage to corporate image (O'Faircheallaigh, 2013; Prakash and Emelianova, 2006), the mining industry has responded with a variety of approaches that aim to achieve expected standards of sustainable development (Hilson and Murck, 2000). The International Council on Mining and Metals (ICMM) was established in 2001 to represent the world's leading companies in the mining and metals industry and to improve their performance in sustainable development (www.icmm.com)[1]. At the individual corporation level, the notion of social licence to operate (SLO) and related concepts such as corporate social responsibility (CSR), corporate citizenship and stakeholder theory are the most common forms of organisational response that enable corporations to conceptualise their relationship with local communities (Prno and Scott, 2012; Kapelus, 2002; Hitch *et al.*, 2014; Parsons *et al.*, 2014). However, these notions are difficult to operationalise in practice (Kemp and Owen, 2013) and have been critiqued as being forms of tokenism (Banerjee, 2008; Haalboom, 2012). For the most part, however, these notions represent a discursive pressure on corporates to conceptualise SLO as something that must be secured to legitimise their operations in the eyes of their varied stakeholders and, specifically, the local community (Parsons *et al.*, 2014).

The state plays an important role in determining the relationship between corporates and communities through specific legislative means and affording definition of what constitutes community. Generally, it is the nation–state through legal and administrative institutions that regulates the entry of multi-national mining companies into a country (Ballard and Banks, 2003). International recognition, such as those mentioned above should influence the role of the state in matters arising between mining corporations and Indigenous communities. In particular, influencing how the state mediates the response to the civic good versus Indigenous rights debate (O'Faircheallaigh and Corbett, 2005; Kapelus, 2002) and the enactment of the different legislative mechanisms designed to protect the rights of its Indigenous communities (Erueti, 2015). However, for the most part, the defining issue in how the state supports the notion of meaningful participation is whether the rights (and oftentimes, the actual existence) of Indigenous communities are recognised.

This paper is organised as follows. To begin, a broad overview of the socio-political context within which Indigenous Māori people operate is presented. Next, a review of the complex nature of meaningful participation is discussed. Without doubt, the mining industry has made significant inroads in response to the international declarations of Indigenous people's rights through the adoption of industry codes and strategic responses such as SLO that draws attention to notions of acceptance and approval by the local community (Thomson and Boutilier, 2011). However, there are significant challenges that complicate the space within which meaningful participation can occur. The paper then goes on to present some examples of what is expected in meaningful participation through the lens of governance and management arrangements that are derived from localised Indigenous values, knowledge and tradition-based processes. Finally, the paper concludes by outlining some specific expectations for meaningful participation in mining with Indigenous communities. While recognising the different contextual circumstance of Indigenous peoples around the world, the key contribution of this paper is to assist corporations and the state in more accurately characterising complex social issues that influence the many multi-dimensional challenges encountered in achieving meaningful participation with Indigenous communities.

Context

In New Zealand, the notion of meaningful participation is influenced by the bi-cultural political economy, which has established certain political and legislative influences that need to be understood when establishing a relationship with Iwi and Māori tribal groups. The added dimension of socio-cultural context ultimately highlights the complexity hidden behind the term meaningful participation. At the heart of Māori tribal society and culture is

the concept of whakapapa, or genealogical connection, where everything operates through a complex mesh of relationships. This holistic view of the world ensures that the principles of whakapapa help to guide Māori in all social, environmental, economic and cultural contexts. These include the concept of kaitiakitanga, guardianship or the "ancestral obligation to collectively sustain, guard, maintain, protect and enhance" the life force of everything, which underpins all relationships with the environment. All relationships are managed through the concept of whanaungatanga, a notion of relationship management that defines how everything relates to each other. This is, in turn, managed through the principle of rangatiratanga, leadership, governance and management. The governance and management processes work to ensure that the rules for engagement are followed according to the tikanga, appropriate rules and practices that are informed by centuries-old values and beliefs.

Te Ao Māori, the Māori world, adds an extra dimension to the complex mosaic of governance and management systems that make up New Zealand both at national and regional levels. Despite there being some constants in values and beliefs across Iwi and Māori tribal groups, there is also a distinct regional diversity that draws attention to the complexity within Māori worlds (Maaka and Fleras, 2005). Each tribal group has their own territory ki uta ki tai, from land to sea, which designates tribal authority over specific rohe or regions. The regional interpretations for tikanga need to be considered when non-Māori wish to form relationships, because the knowledge frameworks that underpin the practices are locally referenced and directly related to the appropriate tribal group. Consequently, engagement with Māori is not just with one generic body but with the group who hold the mana whenua status and who have power and authority in each particular region. Hence, any engagement with Māori in New Zealand is at tribal and regional levels, and mining companies are obliged to form a relationship with the Iwi and/or hapu (clan) groups who are kaitiaki or have custodial status over the targeted land and/or sea-based mining areas.

From the time Māori arrived in New Zealand, they have understood the value of extracting minerals and resources. Indeed, archaeological records show that Māori quarried obsidian and pounamu, greenstone for tools, weapons, trade and ornamentation (Ruckstuhl *et al.*, 2013). An area in the South Island's gold mining region, Skipper's Canyon near Queenstown, is named "Māori Point" after Māori miners Rangiora Ellison, Henare Patukopa and Hakaria Haeroa discovered gold there in 1862 (McIntyre, 2007). Currently, Iwi (Māori tribal groups) are involved in mining and minerals extraction. Māori enterprise is currently involved in the mining industry, particularly in iron sand mining and aggregates, and there is the potential for greater involvement in petroleum, oil and gas exploration offshore and mining above and below ground (Business and Economic Research Limited, 2011). The Ngāi Tahu (Pounamu Vesting) Act 1997 has enabled Ngāi Tahu ownership and control over granting access, mining rights and redress in relation to pounamu, greenstone. These examples are legislative, however, it is important to locate Māori response to mining in an appropriate historical-political context.

At the signing of Tiriti o Waitangi, the Treaty of Waitangi 1840, Māori understood the arrangement to be one of partnership, reciprocal obligation and mutual benefit with the guarantee of rangatiratanga, or chieftainship, ensuring autonomy over their own affairs, including natural resources (Durie, 2001). However, within 20 years of the Treaty's signing, 60 per cent of Māori ownership had passed to the government, and, currently, only 5.5 per cent of land is now held in Māori collective ownership (Ruru, 2011). Indeed, Māori realisation of the benefits from the Treaty were limited until the 1970s and the enactment of various legislative remedies, including the Treaty of Waitangi Act 1975, which paved the way for the Treaty of Waitangi claims settlement process. Ostensibly, the New Zealand Government directed and structured process; it allows Iwi and Māori tribal groups to present grievances caused by breaches of the 1840 Treaty to a Tribunal. Once heard and if the claim is successful, the Tribunal's report will make a number of recommendations for the New Zealand Government to consider. The government is not obliged to accept the

recommendations, but mostly it will enter into negotiations with the Iwi to find ways to reach a claims settlement agreement that will then be binding in law.

It is the settlement process that provides Iwi tribal groups with the legal recognition as the Treaty partners with the New Zealand Government. Each settlement begins a new era of relationship between the Iwi and the government (and its agencies) that uses the resulting management processes to arrive at mutually beneficial solutions and/or transitions. The New Zealand Treaty of Waitangi Settlement Acts (TWSA) provide Iwi with the legal recognition for their Indigenous status, power and mana and authority over their recognised territories, resources and people. The power awarded to settlement Iwi in terms of consultation and consent for any activity within their territories could be seen as providing a model for SLO within New Zealand (Ruckstuhl *et al.*, 2014).

The Treaty-based partnership approach, developed over the past 40 years as a result of changed legislation in the 1970s, has much to offer as a process for engaging in meaningful dialogue with Māori communities to assess the impacts of mining within the context of shifting social expectations and concerns about resource exploitation (Ruckstuhl *et al.*, 2014, p. 2).

The Treaty of Waitangi legislation has driven the enactment of a series of legislation that specifically acknowledges the role and rights of Māori in New Zealand. For example, the Resource Management Act (1991) (RMA), which provides for Iwi to be included in the decision-making that impacts on land, waterways and other resources within their recognised territories. The recognition awarded to them means that not only New Zealand local bodies and national government agencies must consult but also any international groups should consult and form relationships (formal or otherwise) with Iwi as per the legal recognition of status under both the settlement legislation and the RMA (Ruckstuhl *et al.*, 2013; Erueti, 2015). The TWSAs acknowledge and name particular tribal groups as the Treaty partners in regional settings; the RMA allows the relationships to be developed in practice.

The complex nature of meaningful participation

Mining and mineral extraction is a global phenomenon with significant local implications (O'Faircheallaigh, 2015). The industry has advanced the industrial development of many nations and is providing ample financial returns for corporate stakeholders. In addition, opportunities for employment and development of community infrastructure are the most cited positive outcomes for local communities (Hilson, 2002; Hilson and Murck, 2000). In relation to Indigenous communities, there is recognition that mining and mineral extraction can provide substantial net benefits through leveraged government spending on service provision and investment in Indigenous capacity building in organisational skills, governance and leadership (O'Faircheallaigh, 2004; O'Faircheallaigh, 2015). However, it would not be unfair to note that for the most part, the positive returns from mining activities on or near Indigenous people's lands have been captured by the corporations, the nation state and the "majority" non-Indigenous members of the general community (Banerjee, 2008). Evidence suggests that the mining industry has an extremely poor record when it comes to the meaningful involvement of the Indigenous communities on whose land mining and resource extraction operations occur (O'Faircheallaigh and Corbett, 2005; Whiteman and Mamen, 2005; Banerjee, 2008).

Given the considerable "bad press" and escalating costs of resistance, the industry has made significant in-roads in their attempts to reduce the negative consequences of mining and to improve their image (Prakash and Emelianova, 2006). The ICMM outlines a progressive set of commitments, which applies to all member companies and requires engagement with Indigenous peoples that reflects understanding of their rights and interests and encourages building cross-cultural understandings. This further provides for agreement on appropriate processes for consultation and engagement and participation in

decision-making. Ideally, this process should lead to the ultimate goal of full partnership and participation, which empowers Indigenous peoples in all engagement with mining companies. Indigenous participation is described as:

> [. . .] the capacity of Indigenous peoples, in relation to mineral development on their traditional lands, to directly shape the way in which environmental issues and impacts are identified and defined and the manner in which such issues are addressed over the project life cycle (O'Faircheallaigh and Corbett, 2005, p. 636).

The use of the term "directly" is significant and makes explicit the expectation that participation is meaningful, equitable and in-keeping with the traditional decision-making and custodial obligations of Indigenous peoples.

More recently, in a 2013 adaption of commitment principles, ICMM members are now required to obtain the consent of Indigenous peoples for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous peoples and are likely to have significant adverse impacts on Indigenous peoples (www.icmm.com). The position statement clearly outlines the notion of free, prior and informed consent (FPIC) that outlines a process based on good faith negotiation, through which Indigenous peoples can give or withhold their consent to a project. FPIC was recognised formally by the UN Declaration on the Rights of Indigenous Peoples in 2008 and the ICMM set of commitment principles in 2013. The notion of FPIC and its underlying intent had been well established by the UN Permanent Forum on Indigenous Issues 2005 that states:

- People are "not coerced, pressured or intimidated in their choices of development".
- "Their consent is sought and freely given prior to authorisation of development activities".
- They "have full information about the scope and impacts of the proposed development activities on their lands, resources and well- being".
- "Their choice to give or withhold consent over developments affecting them is respected and upheld".

Importantly, the statement also outlines that the FPIC process should strive to be consistent with Indigenous peoples' traditional decision-making processes while respecting internationally recognized human rights (www.icmm.com).

The mining industry has also made very strong attempts at implementing corporate strategies, such as CSR, to give effect to SLO, emphasising on specific approaches aimed at achieving Indigenous participation in environmental management (Hitch *et al.*, 2014, Prakash and Emelianova, 2006). The notion of CSR has emerged in part because of society's increasing awareness and acceptance of sustainability as contemporary discourse at the heart of long-term development. CSR encompasses the idea that the business world not only has economic and legal obligations but also ethical and philanthropic responsibilities (Carroll, 1991). More recent definitions of CSR include corporate attitudes and values towards stakeholders that incorporate the vocabulary of business ethics and human rights and development (Kapelus, 2002; Jenkins, 2004). In many respects, CSR is viewed as voluntary/self-regulatory governance tool for corporations, a catch-all term referring to voluntary codes or declarations of sustainable development and includes triple bottom line of economic development, environmental quality and social justice (Haalboom, 2012). CSR provides the business world with a conceptual framework that enables an approach to an SLO with the relevant communities (Prno and Scott, 2012).

In its simplest form, SLO shifts corporate attention from privileging shareholder interests and opens the door to negotiation with local communities and other stakeholders. In that sense, SLO is a broad attempt to articulate the many ways in which companies are

responding to societal and community expectations (Owen and Kemp, 2013). The notion of SLO comes into play when a mining project is seen as having the broad and on-going approval and acceptance of society to conduct its business (Prno and Scott, 2012; Boutilier and Thomson, 2011). This may link to strong commercial imperatives for mining corporates, but there is also strong connection to the achievement of legitimacy (Parsons *et al.*, 2014; Moir, 2001). Legitimacy, according to Suchman (1995, p. 574), is "socially constructed in that it relates to a congruence between the behaviours of the legitimated entity and the shared (or assumed) beliefs of some social group". The notion of legitimacy is connected to the considered impact on organisational continuity, which is derived from whether the constituent stakeholders of the organisation consider it to be legitimate (AlajoutsijÄRvi *et al.*, 2015). In effect through the lens of legitimacy, the SLO becomes a social contract between corporation and society (Moir, 2001). In mining and minerals extraction, there is evidence of corporations working with stakeholders around their mining sites to develop local legitimacy through contributions to community development (Gifford *et al.*, 2010). These concepts and the practices that stem from them are "particularly relevant for the mining industry, which must navigate multiple expectations of its economic, social and environmental impacts" (Parsons *et al.*, 2014, p. 83).

However, there are a number of challenges that obfuscate the potential of the FPIC process, making meaningful participation difficult to achieve. First, Indigenous peoples encounter difficulties in translating their view of the world, including their relationship to the natural environment, for non-Indigenous legal and administrative discussion (O'Faircheallaigh and Corbett, 2005). The rights of Indigenous peoples to be involved in the environmental management of their lands and resources require any negotiation with an Indigenous community to be undertaken in ways that make sense to Indigenous peoples (Erueti, 2015). Unfortunately, the relevance and value of Indigenous knowledge that is more experiential and spiritual, as opposed to scientifically rational, is often downplayed in environmental assessment and planning processes (O'Faircheallaigh and Corbett, 2005; Ruckstuhl *et al.*, 2014). Therefore, the framework, discourse and institutional apparatus put forward as the forum for negotiation between Indigenous peoples, the state and mining corporations are "culturally alien" to Indigenous ways of thinking and action. As identified by Owen and Kemp (2013, p. 30):

> [. . .] currently, there is an absence of alternative concepts, or an unwillingness to pursue alternatives that engage the tension between short-term profit maximisation and long term value for companies and local communities.

They continue on to suggest that, ultimately, it is the responsibility of industry to listen, learn and respond to what a community "expects", including the poorest and most marginalised.

Second, Indigenous peoples around the world have experienced the dispossession and subjugation of life and power, resulting in loss of land, resources and livelihood (Banerjee, 2008). Consequently, Indigenous communities are often considered as a sub-class of citizens within nation states, who predominantly live on the margins and do not have the capacity or financial resources to participate equally with the state or mining corporations (Trebeck, 2007). Therefore, the cost of managing the process of participation is in the majority of cases prohibitive. The administrative and legal costs are beyond the financial means of the Indigenous communities charged with negotiating them (O'Faircheallaigh and Corbett, 2005). Indigenous communities are effectively priced out of the negotiation.

Finally, in many instances, Indigenous communities have very little or no political power, as their status and rights are not recognised by the nation state (Haalboom, 2012). Even when the status of Indigenous communities is recognised, they often lack political influence. Research conducted on the environmental provisions of negotiated agreements involving Australian Aboriginal landowners and mining companies in Australia highlighted in the majority of cases that meaningful participation, as outlined in the ICMM commitment statements, was virtually non-existent and, in some cases, actually limited the existing rights of the Aboriginal landowners (O'Faircheallaigh and Corbett, 2005). In 2007, the

ICMM itself ignored the already well-established and internationally recognised notion of FPIC in its response to the Bureau VIDS (a representational group for Surinamese Indigenous peoples) in regard to their query as to why one of its members failed to ensure "equitable and culturally appropriate means of engagement" (ICMM, 2003 – principle 9). The organisation passed responsibility to the sovereign State of Suriname to determine how their mineral endowments are managed, knowing well the State did not recognise any legal rights for Indigenous peoples to the lands the occupy (Haalboom, 2012). This speaks to a much deeper socio-political issue, as regardless of the many international agreements that recognise the special relationship Indigenous peoples have with their land and advocate for the protection of their rights, the nation state can effect legislation to override any expectation in relation to how mineral endowments are managed (Haalboom, 2012; Banerjee, 2008).

In regards to the social and cultural complexities surrounding Indigenous people's participation in mining, as happens to often, in their encouragement of mining operations, state officials tend to privilege the needs of mining activities to the detriment of the land rights and citizen entitlements of Indigenous communities (Trebeck, 2007). CSR or SLO do not resolve this issue (Owen and Kemp, 2013; Banerjee, 2001). If communities and their rights are eliminated or negotiated away for economic development, one wonders what initiatives such as CSR and SLO actually mean in this context (Banerjee, 2008). The question then arises as to the legitimacy what constitutes the "social" included in the "social dimension" of both CSR and SLO. Issues abound regarding questions such as:

Q1. Who determines what groups constitute the "social" and therefore what groups are included?

Q2. When and how or can human rights or Indigenous rights be extinguished for the betterment of corporate stakeholders and the dominant populace of communities?

Our argument is not to detract from the useful forum that CSR or SLO provide, rather we believe it important to highlight their inadequacy in their current forms because they do not respond to the material effects of discursive power regimes that create "dispensible" people (Banerjee, 2008).

The multi-dimensional reality of meaningful participation

At the level of the political economy, there are many examples that demonstrate the complex nature of the situation where Indigenous knowledge frameworks inform and collaborate with non-Indigenous practices in the extractive industries and which, we argue, provides a level of legitimacy in relation to achieving localised approval and consent (Parsons *et al*., 2014; Gifford *et al*., 2010). In Australia, for example, there are the Australian Aboriginal Indigenous Land Use Agreements, which is an agreement between Native Title group and others about the use of land and waterways. A Canadian example is the Ermineskin Cree Nation has a 50/50 joint venture agreement with One Earth Oil and Gas Inc. signed in 2010. This is touted as "the first agreement signed directly with a Canadian First Nations Band" and will ensure that the Band is actively engaged at all levels of development and acquires social and economic benefits from the engagement (Ruwhiu *et al*., 2013). In New Zealand, there are no such agreements. However, Māori tribal groups are actively seeking ways to ensure that engagement happens in ways that maintain their tribal integrity and are in-keeping with the legislative mechanisms designed to ensure consultation and participation. One example is a guideline document from the North Island tribal group, Ngāti Ruanuui, which was developed from the Ngāti Ruanui experience of holding traditional authority and mana over a rich gas reserve off their coastlines.

The Ngāti Ruanui document, "Best Practice Guidelines for Engagement with Māori", was written with input from members of the oil and gas businesses operating in the rich Taranaki off-shore gas fields (Rangi, 2014). These included, but were not limited to, input from the Taranaki petroleum operators and industry, Tag Oil Ltd, Origin energy New Zealand Ltd

and the New Zealand Energy Group. It first and foremost names Te Runanga o Ngāti Ruanui as the mandated authority for the tribal group of Ngāti Ruanui and, therefore, provides a clear pathway for oil and gas companies to begin a relationship and create meaningful engagement. The purpose of the document is:

> [. . .] to establish a voluntary approach to managing engagement with Iwi; provide industry with tools to successfully engage with Iwi, and provide a dialogue between industry and iwi to address opportunities and issues (Rangi, 2014, p. 4).

Importantly, the document includes a confidentiality template, spill contingency plan and emergency management planning chart, cultural assessment template and a list of information that Iwi may request from companies. The document outlines how this is to happen and ensures that the industry is under no illusion that any further engagement is led by these guidelines couched in Ngāti Ruanui knowledge frameworks. It is a strong document that encompasses petroleum and minerals prospecting, exploration and production activities in New Zealand and gives tribal groups a voice in future exploration and production.

In the South Island of New Zealand, the Ngāi Tahu Claims Settlement Act, 1998 allows for a strong and non-negotiable Ngāi Tahu voice on all matters to do with their territories – the bulk of New Zealand's South Island. Ngāi Tahu, or Kāi Tahu (as per distinctive tribal dialect), are the Iwi who have connection to Te Waipounamu (South Island of New Zealand). Within the Iwi, there are five primary hapū, Kāti Kurī, Ngāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki (www.ngaitahu.iwi.nz). As a consequence of the legislation, all local bodies and government agencies need to have Ngāi Tahu representation and/or a robust consultation process in place. Ngāi Tahu itself has a central governance structure and 18 Rūnaka regional councils spread across the South Island. Rūnaka are multi-hapū/whānau district councils for Ngāi Tahu Iwi whānui (wider Ngāi Tahu tribal group) in Te Wai Pounamu/South Island. Each of the Rūnaka has various committees that oversee all activities such as those associated with environmental, social and economic development. One example in the Otago region of New Zealand is the Kāi Tahu ki Ōtākou environment committee which is made up from three Otago regional Rūnaka. The committee deliberates over things such as water tank level in the region's rivers; land development; and regional planning. Some committee members also represent the three Rūnaka on various local and environmental bodies, such as Dunedin City Council; Wanaka Lakes Trust (Central Otago) and Otago Regional Council. One role for the committee in particular is oversight for the Memorandum of Understanding between the three Rūnaka and a large gold mining operation, McRae's, situated in the Central Otago area.

In the context of both on-shore and off-shore mining, the relationship building between Iwi and mining companies has been devolved out from the central governance body (Te Rūnanga o Ngāi Tahu) to each of the 18 Rūnaka who have specific responsibilities and obligations to territory and associated resources[2]. These are decided in two key ways: as defined under the Ngāi Tahu Claims Settlement Act, 1998Ngāi (NTCSA); and through their tradition-based tāngata tiaki (people with guardianship) status awarded through past, present and future intergenerational responsibilities and obligations. This means that both the recognised tradition-based tiakitanga (ancestral obligation to collectively sustain, guard, maintain, protect and enhance Māori) and the legislated authority provide certainty for mining companies as to which group they should be working with.

Unlike the Ngāti Ruanui long-term experience, for most of the Kai Tahu Rūnaka, their direct engagement with oil and gas companies is a new experience. In 2014, a two-day workshop was held in Otago that brought together interested southern-based Rūnaka members and Iwi members from North Island areas where a more prolonged history with extractive industries has been in place. As a result of this workshop, several of the southern-based Rūnaka have begun a process to develop policy and strategies for direct engagement with oil and gas companies that will operate within their respective areas – both on-shore and off-shore through a policy and engagement document.

The Ngāti Ruanui document was consulted as a model for the development of an engagement document in the South Island's Otago region. One of the South Island Kāi Tahu rūnaka implemented policy documents "Oil and Gas. Engagement with Kāti Huirapa Rūnaka ki Puketeraki and Ōtākou, 2015" of their own to ensure that, in particular, the oil and gas exploration and extraction industries are fully aware of the obligation to Māori. This is overseen by Kāi Tahu ki Ōtākou (KTKO) Limited, which is an Iwi consultation service representing the interests of mana whenua, who have power and authority in a particular region and in issues related to environmental health based in Dunedin, New Zealand. KTKO looks after the interests of Kāti Huirapa, Ōtākou and Moeraki rūnaka, who hold the mana whenua in the Otago region. A similar group, Te Ao Mārama, operate out of Invercargill, New Zealand, and represents Awarua Rūnaka, Oraka-Aparima Rūnaka, Murihiku Rūnaka and Hokonui Rūnaka. The Kati Huirapa and Ōtākou Rūnaka document is one example of the NTCSA legislation in action through engagement documents, which are designed to support crown-directed agencies in comprehensive engagement policies and practice.

For Kāti Huirapa Rūnaka ki Puketeraki (KHR), the engagement document insists that the Treaty of Waitangi principles of partnership, protection, participation and potential are fully realised and the contexts in which these apply is very clear. The language used in the KHR document spells out clearly and plainly the expectations and the obligations for the process for engagement and relationship building. There is also a list of non-negotiable areas that are not on the table for discussion. These are areas of high cultural significance, including wāhi tapu and taonga (places that are set apart) within the interface areas where land meets sea. For example, of particular importance in the KHR takiwā is the ki uta ki tai policy (from land to sea) that engages the inland sources for the Waikaouaiti river, through to the river's mergence into the Waikaouaiti estuary at Karitane, and into the coastal fringes including kelp beds and shellfish beds. The Waikouaiti river and the township of Karitāne are in the coastal Otago region of the South Island of New Zealand.

It remains to be seen if this engagement document will be an effective tool for setting up meaningful engagement between oil and gas companies in the Otago region. Certainly though, it is an example of a tribal collective taking the initiative and setting standards the extractive industries should follow should they want to operate within the Otago region (on shore and off shore). The document is uncompromising on the Rūnaka's stance that all relationships start from a Māori knowledge framework – in particular, a Kai Tahu knoweldge framework. This traditional authority coupled with the legislative authority of the NTCSA provides a strong platform upon which meaningful engagement can begin.

In conclusion, we must acknowledge that the New Zealand example is distinct in regards to the nature of relationship between the corporate, state and the Indigenous Māori community. It operates in a situation where the state does recognise the rights of its Indigenous peoples. However, our key point remains the same, to enable meaningful participation with Indigenous peoples, there are a large number of variables to consider over and above the purely economic. The examples of how Ngāi Tahu and Ngati Ruanui Iwi view meaningful participation through governance and management arrangements that draw Indigenous values, knowledge and tradition-based processes to the fore can inform successful contemporary relationships with non-Indigenous groups and organisations. They also demonstrate the importance of the legislative infrastructure that enables more equitable relationships within New Zealand that are increasingly informed by Māori knowledge frames and process. It should also be noted that, as yet, these Iwi-driven approaches to meaningful engagement are yet to be fully tested in the current political environment.

Concluding remarks – it is simple, but not easy!

Mining is a contested practice that draws attention to the tension between the rights of Indigenous communities and the corporate agenda of profit, shareholder maximisation and

open market. It is an activity that has drawn communities together in protest and sets the scene for some of the world's most violent oppression of human rights (Banerjee, 2008). However, recent commitments made by the mining industry in recognition of the rights of Indigenous peoples do reflect a strong shift in industry ideology in relation to sustainable development, and we would agree are important steps. Driven by international recognition of the rights of Indigenous peoples for participation in the environmental management of mining and mineral extraction projects on their traditional lands, we have seen the emergence of negotiated agreements as a primary resolution mechanism (O'Faircheallaigh and Corbett, 2005; Whiteman and Mamen, 2005). However, it should be noted that the terminology "participation in decision-making" and "strive to be consistent with Indigenous peoples" traditional decision-making processes' are areas where there is vague interpretation.

Importantly, to achieve the aspirations of the industry, the state and Indigenous communities, the notion of meaningful participation must be explored more deeply from the perspectives of all parties to enable a legitimate process of consultation. Indigenous communities must negotiate complex sets of relations between themselves and mining corporations, government (national and local) and the broader community (who may want mining for economic benefits). From the perspective of the mining corporation and the state, meaningful participation must address Indigenous peoples rights in the context of mining projects. Therefore, on one level, the notion of establishing meaningful participation with Indigenous communities is simple. However, notwithstanding the extensive uptake of sustainable development ideology by the mining industry, it is important to locate any examination of specific approaches (and their purported success) within the broader and multi-dimensional context of Indigenous reality. Herein lies the complexity of context that draws us to the recognition that there is no easy answer.

The mechanisms such as those used by the state and mining corporation tend to assume that stakeholder rights are the same as Indigenous rights. However, it is clear that Indigenous groups are not conventional stakeholders (Ruckstuhl *et al.*, 2014). Indigenous peoples have distinct rights, based on their special relationship to lands and resources, and are recognised in the specific rights ascribed in international and national legal instruments (Haalboom, 2012). Therefore, meaningful participation requires the decision-making process regarding mineral extraction to be "balanced with the broader sets of responsibility that are embodied within a culturally constituted worldview that focuses attention onto the wellbeing of future generations and their environment" (Ruckstuhl *et al.*, 2013, p. 37). Taking this approach frames the notion of meaningful participation within the ethics and discourse of Indigenous peoples. Therefore, because each mining development context is unique, as is the Indigenous worldviews of relevance, we suggest that true participation can only occur when it is closely connected to and driven by the appropriate worldview of each respective Indigenous community.

This paper considers the multi-dimensional nature of meaningful participation for Indigenous peoples in relation to mining on their landscape from the perspective of Indigenous peoples:

- in particular, their rights of cultural identity;
- maintenance of traditional practices;
- lands and territories; and
- to self-determination (Whiteman and Mamen, 2005).

As such, we join the call for transformative participation that enables a community-orientated, context-sensitive stance and prompts broad-based collaborative dialogue about local and regional priorities (Owen and Kemp, 2013). This would include re-imagining the role of industry standards and negotiating processes and strategies

such as CSR and SLO to embrace alternative worldviews, practices and ethics. The responsibility to recognise and include the Indigenous worldview would go part way to ensuring meaningful engagement and FPIC. SLO would then also be more effective as a mechanism to respond to Indigenous communities' needs, aspirations and expectations.

Although the mining industry might understand the "economic" value ascribed to a parcel of land or resource, their understanding of the social-cultural importance of landscape to an Indigenous community is severely lacking. Such a narrow perspective underpins the problems observed and experienced by Indigenous peoples in their attempts to negotiate meaningful participation. The tensions that exist are deeply associated with issues of human rights in general and the rights of Indigenous people more specifically. Indigenous peoples and their ways of life are especially susceptible, because not only do they rely heavily on the land and resources to sustain their livelihoods but also their cultural identity, traditional customs and practices are deeply entwined within that specific environment. The struggle becomes more poignant, because the tension is not about financial compensation but the survival of Indigenous peoples.

Notes

1. The International Council on Mining and Metals (www.icmm.com),

2. Te Rūnanga o Ngāi Tahu (www.ngaitahu.iwi.nz).

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