

A Problematic Process: The Memorandum of Understanding between Barrick Gold and Diaguita Communities of Chile

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“Canadians need to be aware of what Barrick is doing. The company is trying to make money at any cost, at the price of the environment and the life of communities. Canadians should not just believe what Barrick says. They should listen to what other voices, those from the local community, have to say.”

– Raúl Garrote, Municipal Councillor, Alto del Carmen, Chile

Introduction

In May, 2014, Canadian mining company Barrick Gold announced that it had signed a Memorandum of Understanding (MOU) with 15 Diaguita communities in the area around the controversial Pascua Lama mine.ⁱ According to the company, the stated objective of the MOU between Diaguita Communities and Associations with Barrick’s subsidiary Compañía Minera Nevada Spa in relation to Pascua Lama is to exchange technical and environmental information about the project for which Barrick committed to provide financial and material resources to support its analysis. Barrick claimed that the MOU set a precedent in the world of international mining for community responsiveness and transparency. According to company officials, the agreements met and even exceeded the requirements of International Labour Organization (ILO) Convention No. 169 and set a new standard for mining companies around the world in their relationships with local Indigenous communities.ⁱⁱ

While this announcement sounded positive, the situation is much more complex and problematic than that presented publically by Barrick Gold. The MOU raises questions regarding: 1) Indigenous identity, rights, and representation; 2) development and signing of the MOU, and 3) strategies used by mining companies to gain the so-called social licence from local populations.

The information in this report is based on a one-week field visit to the Alto del Carmen communities in March, 2015, including interviews with 12 local community representatives and activists, as well as participation in several group events and two meetings with Lucio Cuenca, Director of OLCA (*Observatorio Latinoamerica de Conflictos Ambientales*), MiningWatch Canada’s partner organization in Chile. The mine straddles the Argentina-Chile border; however this report focuses on the Chilean side of the operation and its relationship with local communities.

1. Context and Background

Pascua Lama is a gold, silver and copper project of Toronto-based Barrick Gold, the largest gold mining company in the world in terms of gold production. Pascua Lama is a high-altitude mine straddling the Andes Mountains in Chile and Argentina, at an altitude of between 3,800 and 5,200 metres above sea level. It is one of the largest reserves of gold and silver in the world – an estimated 15.4 million ounces of gold, 675 million ounces of silver, and 250,000 tons of copper.ⁱⁱⁱ

The Pascua Lama project has been plagued with challenges and controversy since construction began in the late 1990s. Of primary concern has been the predicted negative environmental impact of the project, particularly given the location of mineral reserves underneath and near glaciers that are part of a watershed that serves one of the most fertile transverse valleys in Chile, the Huasco Valley.

The mineral reserves are located in the Atacama Region of Chile, a semi-arid zone except for the Transverse Valleys (*Valles Transversales*), which each contain a small river flowing down from the Andes Mountains to the Pacific Ocean. The narrow valley beds are very fertile, with a system of gravity fed irrigation that enables the cultivation of fruit and vegetables, and are famous world-wide for the production of wine, *pajarete* (local sweet wine) and *pisco* (a Chilean brandy). In addition, further up the valleys in the mountains, traditional pastoralists herd goats and cows in the mountain meadows near water springs and snowmelt streams.

The Pascua Lama mining project is at the head of one of these transversal valleys: the Huasco Valley. Alto del Carmen is the name of the municipality (county) in which the mine is located. Alto del Carmen is also the main town and is situated where two rivers that flow down from the mountains meet to



Fertile, narrow valley; Photo: Adrienne Wiebe

form the Huasco River. Each of these two river valleys, El Carmen and El Tránsito, sustains a small population based on small and medium-scale agriculture.

There has been significant resistance in the valleys of Alto del Carmen to the development of the mine since the beginning. Lack of transparency with communities in the original phases and later problems with environmental impact led to considerable social conflict and upheaval. The community was divided between those who supported the mine because they thought that it would provide economic development and jobs, and those who felt that the environmental damage was too high a price to pay.^{iv}

Local, national, and international action against the mine reached a peak between 2005 and 2009, according to Luis Faura, a community leader who has been involved in this struggle for about 15 years. The community movement has largely utilized legal and judicial processes to oppose the mine.

As Rodrigo Villablanca Páez, a member of the Coalition for Water (*Asamblea del Agua*) states, “We needed to become experts ourselves to understand the projects, laws, and judicial processes. We have made claims, provided expert witnesses, and even made a denunciation in the Inter-American Commission on Human Rights, last year [November, 2013]. We have gathered a lot of data, information, and support, but we have always faced a lot of obstacles and detours.”



March against the Pascua Lama project; Photo: OLCA

Community members learned how to collect water samples for quality monitoring. Numerous researchers, both Chilean and international, have contributed to the effort to gather and analyse data to evaluate the impact of the mine.

Community organization and mobilization eventually led to national and international visibility of the case. The community currently has 10 complaints in process before State administrative bodies, as well as various national and international courts, and it is

working to increase awareness among shareholders in Canada, the USA, and Europe of the problems with this mine.

An environmental disaster at the mine in the first half of 2013, denounced by community members, led the Chilean government to halt mine construction in October 2013. As a result of the environmental damage, a fine of US\$16 million was imposed on the company.

In October 2013, the company itself announced that it was suspending operations indefinitely for reasons related to the continued political and social opposition, the objections of the shareholders to the increasing project costs, and the sharp drop in gold prices in the international markets.^v



Action in response to the suspension of the Pascua Lama project; Photo: OLCA

Since late 2013, the mine has been on hold, with only basic operations to maintain environmental safety and structural security. Meanwhile, the company has been assessing how to get a new environmental approval, as well as working to improve its community relations and profile.^{vi} In addition, market factors affect the future of the mine; a gold price of US\$1,500 per ounce is needed for the operation to reach the threshold of 15% profitability that the company seeks. The project also continues to have high operating costs: in 2009, the estimated cost for the entire project was US\$3 billion, but before the suspension in

2013, the company had already spent more than US\$5 billion, and it was estimated that the total could reach US\$10 billion to complete the project.^{vii} In order to cover some of its construction costs, in 2009, Barrick made an advance sale to Silver Wheaton of 25% of the silver from the Pascua Lama project, along with silver from three other mines, a deal that it has had to renegotiate in light of the current suspension.^{viii}

The current elected Council for the Municipality [County] of Alto del Carmen has six Councillors: three who oppose the mine, two who are in favour, and one who is in the middle. Raúl Garrote, one of the councillors opposed to the mine, is a local teacher whose family has been resident in the valley for generations. In the last two years, he has participated in two tours of the mine area hosted by Barrick. The tours are an effort by the company to create more openness and transparency with the community.

Like many residents of the valley, Garrote has grave environmental concerns about various aspects of the operation, such as the elimination of muskeg areas, the location and seepage

from the tailings ponds, effects on permafrost water, and the diminishing size of the glaciers. In addition to the negative environmental impacts, Garrote highlights the social division that the mine is creating in communities: between locals and the large numbers of labourers brought in from other parts of Chile and from neighbouring countries, as well as between those who support the mine and those who oppose it.

This report focuses on the development of the MOUs in 2014 with some Indigenous communities as part of the company's effort to gain the necessary social support in order to mine. As Lucio Cuenca, Director of OLCA, comments, "In this context of uncertainty, the company urgently needs to demonstrate that it has social licence to operate."

2. Diaguita Identity and Status

The majority of population of the upper Huasco Valley has Diaguita Indigenous roots. During the last hundred years, immigrants from other parts of Chile and from other countries, most notably Spain, have also settled in the area. In addition, over the last few decades, many valley residents have relocated for work or education to other parts of Chile on a permanent, cyclical, or temporary basis. Labour migration and inter-marriage have contributed to the increasing population diversity in the valleys. Before the 1990s, very few people openly identified themselves as Indigenous.

The residents knew that they were Diaguita descendants and that their grandparents, the ancestors as they call them, were [Indigenous]. However, the majority of residents did not identify as such even though many of their practices, traditions, cultural expressions, among other elements, had [Indigenous] roots. For them, these were learned forms of life that were naturally practiced without the need for acclamation or distinction. (San Juan Standen, 2014, p. 10)

Beginning in the 1990s, the movement to reclaim Indigenous identity was pushed by outsiders for various reasons and after several delays, the Chilean Congress voted to recognize the Diaguita as one of the "*pueblos originarios*" [original peoples] of Chile in 2006.^{ix}

In Chile, state recognition of Indigenous status and rights is based on the concept of "pre-existing cultures," according to Lucio Cuenca. These are defined as cultures that existed before Spanish colonization. Being recognized as belonging to one of the pre-existing cultures is granted by the state on an individual basis. There is no recognition of a collective Indigenous status that provides for collective rights, and there are no agreements that grant territorial rights or any degree of self-government.

A group of 10 or more individuals with Indigenous identity and a territorial base – that is, who have lived continuously in one area for several generations – can register as an

Indigenous community in Chile. Recognition of individual and community Indigenous status is the responsibility of CONADI – the National Corporation of Indigenous Identity – an entity of the Chilean State.

In the entire Huasco Valley, from the coast to the Andes Mountains, about 3,000 people have registered as Diaguita since the Chilean government decision in 2006. The province of Huasco has a total estimated population of 73,000 inhabitants, but the Municipality of Alto del Carmen, which is the closest to the mine and has the highest concentration of Indigenous inhabitants, only has a total population of about 5,500.^x Most registered Diaguitas live in Alto del Carmen, although some live in other parts of the province and the country.

The most common way that the state uses to prove Diaguita status is by last name, according to historical parish records of those considered Diaguita (Government of Chile, 2001-2003). Thus many people were able to gain or were prevented from gaining their Diaguita recognition on this basis.

Paula Carvajal Borquez (Palinay) tried for many years to obtain official recognition as Diaguita because she has always identified as such. However she did not have the right last name, even though she was a direct descendent of Diaguita grandparents. “But I know who I am, I don’t need an identification card from the Chilean State to tell me that I am Indigenous,” she says. “I did the paperwork in 2010 to get government identification, but because I didn’t have the right last name, I had to submit a lot of paperwork like birth certificates, government letters of recognition of my traditional crafts, and letters of reference from elders. CONADI was going to send an anthropologist to confirm my identity, but I did not hear anything for several years.”

The lack of approval for her application was particularly ironic for Palinay, since CONADI invited her on several occasions to represent Diaguita culture in national Indigenous craft festivals and on television. A couple of months ago, she met the Director of CONADI at an event and asked him about her application. He responded shortly after stating that her identity card was approved several years ago, but for some unknown reason had not been sent to her and had been sitting in a file undelivered. She is suspicious that the reason she did not get her identity card is because she is a vocal opponent to the mine.

3. Barrick and the renewal of Diaguita Culture

Barrick Gold has taken a prominent role in the “rescue” of Diaguita identity and culture, as has been well documented by various independent researchers, as well as Barrick itself (i.e. BarrickBeyondBorders, 2009; Campisi 2008; Salinas 2007; San Juan, 2014).

In part, the interest of Barrick Gold in Diaguita identity may be the result of social opposition from the Huascoaltino Diaguita Agricultural Community (*Comunidad Agrícola Diaguita de los Huascoaltinos*) to the Pascua Lama project.^{xi} This Diaguita Indigenous organization was formed in 1903 under the law of agricultural communities, because at the time, there was no other form of ethnic or cultural organization recognized by the state. It remains an active organization, defending the territory the people identify as theirs by inheritance. In 2007, the organization filed a complaint with the Inter-American Commission on Human Rights (IACHR) arguing that the Chilean government had violated their rights by approving the Pascua Lama project without their consent. The Commission admitted the complaint in 2010.^{xii} It is widely held that since the company did not have support from this Indigenous organization, it sought support from other Indigenous people by facilitating the registration of individuals and the formation of more Diaguitas communities. Whether or not this is the case, there has been conflict between the newly-formed communities and the Huascoaltino Diaguita Agricultural Community.

Since arriving in the region, Barrick established Public-Private Partnerships (APP in Spanish), or partnerships with state governments as part of its social responsibility program. Within the framework of the APPs, Barrick was “the source of financing of many development and local infrastructure projects traditionally the responsibility of the State.”^{xiii} As part of these agreements, Barrick supported the development of Diaguita Cultural Centres. Starting with their establishment in early 2000, these Centres “received...support from CONADI to be legally recognized. Following recognition [of the Diaguita as pre-existing culture] in the Indigenous law in 2006, these cultural centres were considered the legitimate representatives of “ethnicity” by the state.”^{xiv}

Making use of the Cultural Centres, Barrick financially supported anthropological research to document the traditional cultural practices of the Diaguita. In addition, the company provided financing to facilitate workshops for local residents, including traditional weaving, ceramic-production, cooking, and the use of herbal medicines. The mining company also provided free legal assistance to individuals seeking official status as Diaguita and the respective eligibility for government benefits that comes along with official status. Barrick, however, did not foster discussion on issues such as political autonomy and self-determination, nor Indigenous territorial and natural resource rights. Rather, Barrick’s efforts focused on the “non-political” aspects of cultural identity, such as food and handcrafts.

From the perspective of Rodrigo Villablanca, a young Diaguita leader, “Barrick is behind the development of Diaguita identity. Barrick published a book in 2008 about Diaguita culture. The communities here are agriculturalists, descendants of the Diaguitas. I identify as such, and don’t need the government to give me an ID card in order to know who I am.”

In the words of the Manager of Corporate Affairs of Barrick in our country, Rodrigo Rivas, (2009): “the strategy and objective of Barrick is to support this political process in an effort to solidify a social base of support within the ethnic group for the implementation and operation of the Pascua Lama project. (San Juan 2014, p.11)

Barrick’s strategy of investing in Indigenous identity, individual registration, and community formation as a way of developing local social support for mining has led people to use these same elements to resist the mine, individually and collectively. Some people have registered their Diaguita identity in order to have a greater voice in opposition and others have formed new Diaguita communities for the same reason.

Claudio Páez Morales and Juana Villalobos, a couple from El Corral, registered as Diaguita 1.5 years ago. They say they have always known that they were Diaguita and identified as such, but only registered recently. They felt that Barrick was manipulating Indigenous identity for its own purposes: to gain community support and to be able to claim that they have community support based on international Indigenous protocols. Now, Morales and Villalobos believe that they can gain respect and influence with official Indigenous status. While Barrick identifies people with official Indigenous status and international agreements concerning Indigenous peoples to demonstrate local support for their mining project, many valley residents are now using these same elements to resist Barrick.

Jhon Meléndez, a Diaguita and a spokesperson for the Coalition for Water of Huasco Alto (*Asamblea del Agua del Huasco Alto*), is a member of a small Diaguita community named Patay Co, one of the groups that did not sign the MOU with Barrick. Meléndez believes that “although we have lost a lot of our culture, we maintain our traditions, for example we try to eat all local food like our ancestors. We are not ‘rescuing’ our Indigenous identity, like Barrick says; rather we are ‘preserving’ our identity.”

Like Jhon, Palina objects to the commodification and exploitation of her Indigenous identity. “We dress up for ceremonies and photos when we sign agreements. We are learning the Quechua language, the language of the Inca Empire, not the local language, because someone from the Quechua area came to teach ceramics and taught people some Quechua words. Those people signing the MOU are a caricature of our culture. Barrick is using status to legitimize its presence. We need to make an effort to guard our authentic culture, preserve it, and transmit it to our children. So for this reason, we have gotten our [Indigenous status] papers because that gives us some power.”

Natalie Osorio Escobar, a young anthropologist from Colombia, came to the valley of Alto del Carmen in 2009 with the *América Solidaria* Foundation, a Latin American volunteer placement agency that “strengthens local projects that improve the quality of life of the poorest and most excluded of the continent’s people.”^{xv} In this case, Osorio was assigned to

work with the local municipal government with the Public-Private Partnership (APP) established by Barrick.

However, soon after her arrival, Osorio objected to the task she was given: to research and teach residents of the valley how to be Diaguita. The objective was to foster Indigenous identity for the community based on traditional cultural activities that had been seemingly lost. She was dismissed from her position with *América Solidaria* when she started supporting the local movement against the gold mine. She feels that *América Solidaria* was supporting Barrick in a strategy to manipulate local Indigenous people to get the MOU signed in order to legitimize their operations.

Osorio also feels that some anthropologists in Chile have abandoned their professional ethics and are working for the interests of transnational companies rather than those of the Indigenous communities. She recalls that Franko Urqueta, an anthropologist employed by Barrick, offered her a job with the company several times. He said that Barrick could pay her a very high salary. According to Natalie, he asked her why she cared what happened in the valley and why she was being so idealistic.

4. The Memorandum of Understanding (MOU)

The development of the MOU with Diaguita communities that were registered between 2000 and 2010 took place in the context of expanding international standards on Indigenous rights, such as ILO Convention 169 and the United Nations Declaration on Rights of Indigenous Peoples, which were ratified by Chile in 2008 and 2007, respectively. At the national level, Chile also passed the Indigenous Law 19,253 in 1993 establishing rules for the protection, promotion, and development of Indigenous groups. Facing opposition in the valley from the Huascoaltino Diaguita Agricultural Community and in the context of these developments in Indigenous rights, Barrick sought to establish an agreement with certain local Indigenous communities. These tensions produced two divergent tendencies in the relations between Barrick and the community, as Gajardo explains in her study of the case:

From 2000 to 2010, there was a clear tendency of the [Chilean] state to marginalize and even criminalize movements claiming Indigenous land rights and hindering the development of extractive projects undertaken by the state or private companies ... at the same time, there was fairly obvious support of Indigenous people without territorial claims, such as the Diaguita Cultural Centres which received recognition and support from the State and Barrick to implement programs of cultural recovery. (Gajardo 2015, p. 93-94)

Barrick publicized the MOU with Diaguita communities in 2014 as an example of an agreement that met all international standards on Indigenous peoples' rights, such as those enshrined in ILO Convention 169. Many shortcomings have been identified in the MOU, not only in terms of its content, but also in relation to the process of developing the agreement. Clearly evident in the voices of the residents of the Valley is the lack of transparency and clarity in the process, and the resulting confusion and conflict within communities.

4.1. Lack of Open Participation and Transparency

One of the biggest problems with the MOU is the lack of open community participation in the development and approval of the agreement. Those interviewed indicate that the agreement was drafted and signed by a few leaders without input of the rest of the members, and that community members were then manipulated or coerced into signing the document.

The process of how the MOU was disseminated and discussed with members of the communities is problematic and can be seen as a violation of self-determination and of the Diaguita culture. The Diaguita have their own traditional process of participation, decision-making, disseminating information, and choosing their representatives, but the company did not take into consideration these processes. Rather, it imposed foreign forms of organization and decision-making to expedite the development of the MOU. Another problem is that the particular geography and culture of the region makes processes slower because more time is required for movement from village to village, and there are limited means of communication. The population is very sparse, dispersed, and often isolated in the long, narrow valleys, with little public transportation or easily accessible means of communication. The company's relatively rapid work with a few leaders to develop and finalize the MOU did not live up to standards of culturally appropriate means of participation and consultation.

"It's a lie that 75% of the people in the valley are in favour of the mine, like the head of Barrick said. The agreements were signed by a few people – the rest try to complain but the signed agreements are legally binding," remarks Guillermo Iriarte Fredes, of San Felix.

For example, Artemio Quinsacara is the official leader of the Diaguita community *Sierra de Huachacan*. According to several community members, this young man was not the elected leader. He was born in El Corral, in the valley, but lives in the provincial capital of Vallenar. According to local testimonies, Barrick allegedly gave him a truck and a salary with the expectation that he would get people in the community to sign the agreement. According to the testimonies, he offered 300,000 Chilean pesos (about US\$600) to each person who signed. Artemio says he has 50 people in agreement. However, Claudio Páez Morales thinks they must be from Vallenar as well, because few of the local residents are in agreement. According to Páez Morales, currently a member of the *Diaguita Wicay Kokua* Diaguita

Community, the fact that those with Diaguita status who live outside the valley can sign these agreements is problematic for those living in the valley.

Ernestina Ossandon, a former member of *Sierra de Huachacan* and a well-respected elder, describes the situation in the following way. “We have been organized for a long time because we are the closest community to the mine. Artemio signed without consulting us – he created a Board of Directors made up of his own family and friends for *Sierra de Huachacan*. We didn’t know that he had done this. We went to Artemio and asked for the list, and then asked Barrick. We don’t want an agreement. We want Barrick to pay damages and leave. Now there is social division – there are now three Diaguita organizations in El Corral. We don’t know how much money Artemio received for getting the agreement signed with Barrick.”

Ernestina is now forming a new Indigenous community with others opposed to the mine called *Wicai Locua del Corral de la Cuesta* (which means “Heart of Water” or “Soul of the Earth” in her native language). “I am going to fight this until death. I want my children to put on my tomb – ‘NO to Barrick’ – and if they do not, I will haunt them,” she says with a grin.

In *Tatul Los Perales*, another community that signed the agreement with Barrick, Jaime Valdez says, “they wanted us to sign in May 2014, without reading it. Some of us refused. They called us ‘brutes’ and said that we were stupid and didn’t understand.” Nelda Vallejos Trigo says that the President of *Tatul Los Perales* went house by house and got people to sign, including some who were not at home. According to the President, 22 of 30 members signed.

The community of *Chigüinto* in the Tránsito valley has a similar story. Various members of the community, including one woman who was Secretary on the Board of the community, says that the President arrived at a meeting together with the lawyers and wanted everyone to sign. But the members had no idea of the content of the agreement. Another resident recalls that the President went house-to-house collecting signatures of people, even if they were not at home.

Similar to the case of Artemio Quinsacara, many members of *Chigüinto* reject the leadership of Solange Bordon, the President. They say that she did not grow up in the valley, although her grandparents were from the valley and she has a last name that is considered Diaguita. She returned to the community as an adult and many residents feel that she does not care about the valley, because she does not have the same attachment to the place. “She cares more about what she can gain personally from the company, rather than the health of the valley,” says Susanna Compillay, a local community member.

These are the experiences that residents of the valley relate, which indicate the lack of transparency in the process of developing and signing of the MOU between Barrick Gold and Diaguita communities. These experiences also reflect the social conflict and division that the Memorandum has generated.

4.2. Handouts

According to Barrick Gold's website, as part of the Memorandum of Understanding, Barrick will make technical and environmental information about the Pascua-Lama project available to the communities and "will provide financial resources and materials required to support analysis of this information... Under the agreement, a technical committee comprised of representatives selected by the MOU signatories will oversee the work. An independent mediator has also been appointed."^{xvi}

Consequently, the Memorandum includes a certain amount of money for research for each community. Additionally, beyond the Memorandum agreement, local residents report that Barrick Gold gave money to each signatory community, which they say were not made in a transparent or clear way for community members, causing much confusion. Moreover, conflict was created within communities themselves because of unclear management of funds and seemingly arbitrary or unequal distribution of funds to members.

According to several residents of the valley, Barrick gave 1.5 million Chilean pesos (US\$2,200) to each community as part of the MOU so they could hire legal counsel, anthropologists, mediators and other consultants to prepare a report by April 2015. According to other sources, Barrick provided US\$2.3 billion in total for this investigation process.^{xvii} Barrick appointed a mediator and dictated to the communities which professionals should be hired. But several members of the community believe that in practice, most of the money was distributed directly to people in communities. While the leaders kept a proportion of the funds to prepare the reports for Barrick, most of the money was given to members of the community for the education of children and other social needs, or simply to "pay" them to support the Memorandum.

In any case, the management of money given to Diaguita organizations that signed the MOU has not been very clear and has led to suspicion among community members. Father Nelson Barrientos, priest of the Catholic parish of Alto del Carmen, feels that the company is using this money to buy the support of the Diaguitas, to clean up its own image, and to legitimate the company's operation in the region. He does not believe that 15 communities agree with Barrick, but rather that 15 leaders signed the agreement and then "silenced the people with money."

Neighbours say the controversy over the Memorandum has created division within communities and that the number of Indigenous communities has increased as groups

divide and new ones are formed because people do not feel that existing groups represent their points view and interests. Several people reported that they are in the process of registering new Diaguita communities with CONADI.

4.3. Lack of State Recognition of Collective Rights

This case represents a lack of respect for the collective rights of the Diaguita population both by the Chilean government and by the company. Lucio Cuenca points out that it is a legal problem that the Chilean state considers Barrick's agreements with Diaguita communities, as well as the Huasco River Valley Irrigation Association (*Junta de Vigilancia del Río Huasco y sus Afluentes*)^{xviii} to be beyond state jurisdiction. He indicates that the Chilean government sees these as agreements between private parties and therefore takes no responsibility for compliance or the legality of the agreements. The Chilean government does not support or monitor the negotiation or the execution of the agreements. Thus the balance of power between Barrick and community organizations is asymmetrical and communities are without legal recourse. Neither does Chile recognize any collective rights of Indigenous peoples in the country, nor any degree of self-determination. As noted above, the Chilean government is being sued before the Inter-American Commission on Human Rights (IACHR) for Indigenous rights violations in connection with approval of the Pascua Lama project.

Nadja Knüller Kfalamun (2014) recently completed a thorough analysis of the MOU within the framework of ILO Convention 169. Her research indicates that the MOU falls significantly short of this standard, including in the areas of the right to consent, collective and territorial rights, and the right to self-determination.

For example, the right to prior consultation and the right to genuinely influence the adoption and implementation of a project are key principles in Convention 169. In the case of the MOU with Barrick Gold, "there was no effort to seek a consensus, rather the approval of villagers was sought for content that was clearly non-negotiable, which had been pre-prepared, and whose full scope the company did not want to fully divulge."^{xix} Another critical problem with the MOU as measured against ILO Convention 169 is the lack of a suitable method to facilitate the participation of all affected peoples. The consultation in this case was very selective, including only communities and individuals willing to support Barrick.

5. Power Imbalance

There is an enormous difference between the financial, material, social, and political resources available to a transnational mining company and those available to small-scale farmers in an isolated valley in Chile. As a result, the apparent social responsibility of the

company to “share the benefits” of the mining operation with the local population can easily become a tool for influence and manipulation.

Local testimonies allege that corporate gifts and favours have been used by Barrick to gain social licence. Numerous residents spoke about the offers that Barrick has made to them personally and to the community generally, and their sense that this was a means of obtaining their silence and acceptance of the mining operation in their valley. “Barrick is trying to rescue its reputation by buying silence with gifts and jobs.” (Eduardo Alfonso Mulet, San Felix)

Barrick has provided funds for construction of the new secondary school, school buses, uniforms, etc. It has set up various funds for grants for local economic development and social projects. Often the Barrick name and logo are attached to their donations. Many people resent this because they feel that the company is replacing the role of the state in their territory.

Despite the temptations, some residents who are opposed to the mine have firmly rejected any gifts or offers from Barrick. “Barrick gives grants for community projects, but we have taken nothing; we have clean hearts.” (Ernestina Ossandón, El Corral) “They offered me money for new horses and new facilities [for wine production]. They said ‘we are trying to improve the valley.’ But I said no.” (Guillermo Iriarte Fredes, San Felix)

While I was visiting the valley, an association of 12 women with small tourism service businesses in the valley had a major internal debate and almost split. Several members wanted to accept a grant from Barrick, while others said they would leave the Association if the group did accept a grant. In the end they decided not to take the grant.

The immense asymmetry of power between company and community is starkly illustrated by the case of the Huasco River Valley Irrigation Association (*Junta de Vigilancia del Río Huasco y sus Afluentes*).^{xx} This Association is one of the most important social structures in the entire Huasco Valley. The Association was established in 1908 and has jurisdiction over all the natural and artificial flows of water in the valley. Given the scarcity of water, the use of irrigation is carefully managed and there is a complicated utilization system. Chilean legislation regards water as a commercial commodity that is independent of land ownership and rights. Because of this, “water shares” are associated with particular pieces of land in some cases, and in other cases as commodities that can be bought and sold.

Within the Association, members have voting rights according to the number of water shares they have. One member estimated that 3% of the members control 70% of the votes because some of the larger landowners further down the valley have greater numbers of water shares. This creates serious conflicts between smaller landowners, who live further up the valley and closer to the mine and who are more concerned about possible

contamination, and larger landowners who are apparently more concerned with the profitability of their crops than the health of the land.

Barrick negotiated one of its first community agreements with the Association in 2005-2006. In the agreement, Barrick committed to pay the Association US\$60 million over 20 years or US\$3 million per year. In return, the Association agreed to take any concerns over the mining project directly to the company, not to the environmental assessment process that was then underway. Given the large sum of money involved, the agreement has been the source of considerable conflict within the association, as well as accusations that some leaders have mismanaged or misappropriated funds.

In addition, according to Lucio Cuenca, although the agreement specifically states that the Association has the right to stop the mining operation if it observes environmental damage caused by the mine, this has not been the case in practice. In 2013, when there was an environmental crisis, mining operations were halted for other reasons, not because the Association protested.

Conclusion

This report presents the experiences of residents of communities in the Huasco Valley. The voices documented here reveal that the Memorandum of Understanding signed between Barrick Gold and some local Indigenous groups is not an ideal example of a corporate agreement with a local Indigenous community. On the contrary, this analysis finds that the result of the MOU has been to weaken the resistance of Indigenous and non-Indigenous people opposed to the Pascua Lama project.

Barrick has used its immense financial resources to facilitate the formal registration of some Indigenous groups to “rescue” and even create cultural activities. It appears that Barrick’s objective in supporting state registration of Diaguita people and some Indigenous organizations was to create groups with which to sign a MOU. By signing an agreement with select groups and individuals, without fully disseminating and negotiating the content with the entire community, Barrick demonstrates a lack of respect for Indigenous communities and culture, and violates their right to prior consultation, to free, prior and informed consent, and to self-determination.

As such, Barrick’s claim to have respected internationally recognized Indigenous rights, such as those described in ILO Convention 169, obfuscates its abuse of Indigenous rights for its own interests. Herein lies the dichotomy: the desire to give the appearance of community support for the mine, while the process of developing the MOU weakens the community fabric through the divisions that it created.

Further, by bringing attention to an agreement with selected Indigenous groups, Barrick ignores the ethnic diversity in a region with a population of about 5,000 people that includes Indigenous communities, as well as past and recent immigrants, all of whom call the Huasco Valley their home. This is evident in the Coalition for Water of Huasco Alto, (*Asamblea por el Agua de Guasco Alto*), an association of organizations and individuals including farmers, business owners, farmers, Indigenous and non-Indigenous people, immigrants, churches, and environmental groups. The Coalition and the Huascoaltino Diaguita Agricultural Community are both organizations active in the opposition to Barrick Gold's mining project, and both are composed of a wide range of people, including Indigenous communities.^{xxi}

In conclusion, Barrick Gold claims that the MOU signed by some Diaguita leaders with regard to the Pascua Lama mining project represents an exemplary process of negotiation and agreement between a mining company and Indigenous communities. But as valley residents allege, it was a confusing and manipulative process that failed to achieve the full support of communities that signed on. As a result, the MOU does not ensure broad-based local support for the Pascua Lama mine. Instead, it has been developed through the manipulation of Indigenous rights and continues to foster social division at the local level.

Next Steps

Following from this report, it is important to further investigate the role of the Chilean state and the Canadian state in this case.

The Chilean state is currently facing a complaint before the Inter-American Commission of Human Rights concerning its failure to protect Indigenous rights when it approved the Pascua Lama project, as established in Chile under the National Law for Indigenous Peoples and ILO Convention 169. The Chilean government considers the MOU to be a "private agreement" and thus refuses to monitor the negotiation or compliance with the agreement to ensure that the process respects Indigenous rights. It is worrisome that the Chilean state would privilege and legitimate mechanisms that undermine internationally recognized Indigenous rights in order to facilitate the expansion of large-scale mining in areas that have been relatively protected. This sets a dangerous precedent for respect of Indigenous rights and other collective rights at a time when the encroachment of extractivist mining in Chile, and throughout Latin America, is more intense and aggressive than ever.

The role of the Canadian state is also cause for concern. It has been documented in other cases how the Canadian government has placed Canadian business interests above its responsibility to promote and protect the rights of the mining-affected peoples. As a result, further research is recommended to better understand the role that the Canadian government may have played in the promotion and development of this MOU between

Barrick Gold and certain Indigenous communities in the area of the Pascua Lama mine project.



Meeting with residents in the Valley; Photo: Adrienne Wiebe

References

- BarrickBeyondBorders, 2009. *The Diaguita of Chile: supporting the determination of an Indigenous people*. <http://barrickbeyondborders.com/people/2009/03/>
- Barrick Gold, 2014. *Pascua Lama: Diaguita Memorandum of Understanding*. On Barrick Gold website, May, 2014.
- Campisi, Christina (2008). *Reflections on the "Pascua Lama Conflict" in Chile: Corporate Social Responsibility and the 'Nature' of the Other*. University of Montreal, Montreal: Thesis M.S. in Anthropology.
- Cuenca, Lucio (2012). "Mapa del despertar comunitario. Los conflictos medioambientales en Chile." In *Movilizaciones de Arica a Tierra del Fuego: Mapa de los Conflictos Ambientales*." Santiago: Editorial Aun Creemos en los Sueños. (p. 7-16).
- Gajardo, Anahy, 2015. "Etnicidad, reemergencia indígena y conflict minero. El Proyecto Pascua Lama, el Estado y el proceso de reethnificacion de los Diaguitas del Huasco alto, Chile." *Anuari Del Conflict Social*, 2014, pp. 73-105.
- Government of Chile, 2001-2003. *Informe comision Verdad Historica y Nuevo Trato: Vol 1 – Los Diaguitas*. Online book
http://www.serindigena.org/libros_digitales/cvhynt/v_i/1p/7_primera_parte_II_no_rte_%20cap5.pdf
- Knüller Kfalamun, Nadja (2014). *Memorandum de entendimiento no se cumple en absoluto: Analisis del acuerdo entre Barrick Gold y las comunidades diaguitas, según los parámetros de la consulta previa del Convenio 169 de la OIT*. Santiago: OLCA.
- Salinas Rivera, Barbara (2007). *Implicancias del Conflicto Pascua Lama, Valle del Huasco, Region de Atacama*. Tesis de maestría no publicada, Universidad de Chile.
- San Juan, Constanza (2011). *Capital Social en el Valle del Tránsito: transformación e impactos intangibles de la trasnacional Barrick Gold Corp. en el Valle del Huasco*. Tesis de maestría no publicada, Universidad de Chile, Santiago.
- San Juan Standen, Constanza (2014). "Certezas desde el conflicto Pascua Lama: La destrucción del Capital Social como nuevo impacto y objetivo de la estrategia empresarial tras un conflicto socioambiental." *Boletín de Geografía, UMCE*, No. 34, pp. 3-22.

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ⁱ Barrick Gold, 2014, *Pascua-Lama: Diaguita Memorandum of Understanding*.

ⁱⁱ Globe and Mail, May 28, 2014, "Barrick reaches deal with Indigenous groups over Pascua Lama mine"

ⁱⁱⁱ Barrick Gold, Annual Report, 2014; <http://www.barrick.com/files/annual-report/Barrick-Annual-Report-2014.pdf>

^{iv} San Juan, 2011.

^v Reuters, October 31, 2015, "Timeline - Barrick shelves development of Pascua Lama"; <http://www.reuters.com/article/2013/10/31/barrick-results-idUSL1N0IF1UF20131031>

^{vi} La Tercera, March 8, 2015, "El segundo tiempo de Pascua Lama"; <http://diario.latercera.com/2015/03/08/01/contenido/negocios/27-184997-9-el-segundo-tiempo-de-pascua-lama.shtml>

^{vii} Globe and Mail, May 28, 2014, "Barrick reaches deal with Indigenous groups over Pascua Lama mine"

^{viii} Forbes, January 8, 2015, "Silver Wheaton Announces Changes to Two Streaming Agreements in Response to Changing Business Conditions"

^{ix} San Juan Standen, 2014, p. 10.

^x INE - Instituto Nacional de Estadísticas, Chile, 2015. The last recognized census was done in 2002, after that time the data is based on projections; <http://www.ine.cl/>

^{xi} <http://diaguitashuscoaltinos.blogspot.ca/2009/08/quienes-somos-los-diaguitas.html>

^{xii} INFORME No. 141/09, PETICIÓN 415-07: COMUNIDADES AGRICOLA DIAGUITA DE LOS HUASCOALTINOS Y SUS MIEMBROS CHILE, December 30, 2009; www.cidh.oas.org/annualrep/2009sp/Chile415-07.sp.htm

^{xiii} Gajardo, 2015, p. 90.

^{xiv} Gajardo, 2015, p. 91.

^{xv} <http://www.americasolidaria.org/conocenos/mision-vision-y-valores/>

^{xvi} Barrick Gold, 2014. *Pascua-Lama: Diaguita Memorandum of Understanding*.

^{xvii} Knüller Kfalamun, 2014, p. 2.

^{xviii} This is the organization recognized by the state that brings together all the farmers and peasants who have rights to utilize the water in the valley's rivers and streams. In Chile, these water rights are based on ownership of land so this organization functions like an "anonymous society," and voting rights are based on the number of shares one owns.

^{xix} Knüller Kfalamun, 2014, p. 7.

^{xx} Junta de Vigilancia de la Cuenca del Río Huasco y sus Afluentes; <http://www.riohuasco.cl/quienes-somos/>

^{xxi} Asamblea por el Agua de Guasco Alto, Letter published July 17, 2015, "Comunidades exigen frenar irregularidades tendientes a viabilizar Pascua Lama"; <http://olca.cl/articulo/nota.php?id=105495>