



MINING AND LOCAL-LEVEL DEVELOPMENT

**Examining the gender dimensions of
agreements between companies and
communities**

**Practitioner perspectives study
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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CMCA	Community Mine Continuation Agreement
CSRSM	Centre for Social Responsibility in Mining
DFAT	Department of Foreign Affairs and Trade
EIS	Environmental impact study
FPIC	Free, prior, informed consent
MCA	Minerals Council of Australia
NTRB	Native title representative body
PNG	Papua New Guinea
SIA	Social impact assessment
UDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
USA	United States of America

Executive summary

This report represents a preliminary output from an applied research project undertaken by the Centre for Social Responsibility in Mining (CSR) at The University of Queensland and funded by a partnership between the Minerals Council of Australia (MCA) and Australia's Department of Foreign Affairs and Trade (DFAT).

Scholarly literature on the specific topic of mining, gender and agreement making suggests that women's participation in company-community agreement processes is diverse and is determined by a number of contextual factors. These factors include: local culture; socio-economic environment; social status; historical precedent; and legal, political and organisational settings.¹ While there are several standout exceptions that have been documented in the literature, most evidence suggests that in the context of mining, these and other organisational and industry-related factors work together to exacerbate gender inequality, including in agreement processes. In particular, the rights, needs and priorities of women are often excluded.

Investment in women and consideration of gender is known to deliver long-term health, education and local development outcomes – this is undisputed in the human development literature. It is reasonable then to suggest that the issue of gender equality and questions of women's inclusion/exclusion should become important focal points in debates about mining and development. A number of key considerations remain unexplored within this arena, including: women's participation in agreement processes, the gendered distribution of agreement benefits, and the extent to which impacts and benefits influence (either positively or negatively) women's development and economic capacity. These are some of the issues that this project investigates.

The project was undertaken in two phases. Phase one was designed as a preparatory step to the case study research in phase two. As there was so little literature available on the specific topic of mining, agreements and gender, the research team sought to connect with practitioners who had been directly involved in agreement processes to hear grounded perspectives on the topic and connect those experiences with the broader literature, prior to undertaking case study research. A total of 22 practitioners were interviewed, each with a diverse range of experience across different agreements in a variety of countries and cultural contexts. Almost half the interviewees were women and two self-identified as indigenous. These interviews provided helpful insights about gender and mining agreements, and highlighted critical issues to consider in scoping and undertaking Phase Two.

The analysis presented in this report is based on available literature and semi-structured interviews covering interviewees' observations, anecdotes and opinions about gender dimensions and women's involvement in agreements, largely relating to the negotiation phase. While the interview protocol canvassed a range of agreement processes, there is a focus on negotiation in this report. This reflects the roles of interviewees and the limited focus on agreement implementation that has been reported in the literature.

¹ See in particular O'Faircheallaigh (2011; 2012b).

Although interviewee observations and opinions were occasionally conflicting, some general trends emerged. The report is organised around the following themes:

- factors that influence women's involvement (Section 2.1)
- women's inclusion/exclusion in benefit sharing (Section 2.2)
- challenge of involving women in agreement processes (Section 2.3)
- industry capacity for engaging gender in agreement processes (Section 2.4)
- strategies for increasing women's participation (Section 2.5).

Some of the key findings from the report are as follows:

- In line with existing literature, interviewees agreed that women's participation in agreement processes was a product of existing gender dynamics in the local culture, as well as the dynamics of the dominant society and the culture of the organisations involved, including both company and community. (Section 2.1)
- General literature about mining and development suggests that men tend to secure a greater share of the benefits that flow from mining. Generally speaking, interviewees believed that was also true in the case of agreements. (Section 2.2)
- Interviewees noted several outcomes that benefitted some women, such as the development of institutional capacity. In some cases, women's involvement in agreement processes triggered involvement in community decision-making more broadly, even in areas where women had not previously been active.
- Several interviewees suggested that women have influenced benefit distribution decisions, but noted that this did not necessarily lead to gender-equitable distribution of benefits.
- Interviewees said only a minority of agreements included specific provisions for women or quotas for women's participation (e.g. in employment and training). Interviewees were somewhat divided on their opinions on the effectiveness of these provisions. While some operations had achieved good outcomes as a result of concerted efforts in implementation, other operations suggested that while funds allocated for women can be symbolically important, they are not always enough to guarantee equality or women's empowerment, and can inadvertently simplify the diversity of women's rights, interests and priorities. (Sections 2.2 and 2.5.6)
- Quantitative measures of women's representation and participation can be poor measures of equality or empowerment as they can simplify and/or render invisible other factors contributing to gender-based inequality. However, several interviewees emphasised that non-representation did not necessarily indicate exclusion, and gave specific examples of women having strong influence outside of formal negotiations. (Section 2.3.1)
- There is a complex dynamic between women's representation on behalf of family/clan groups and representing 'women's interests'. Two types of representation were considered important to women having influence in negotiations – women representing family/clan groups and women's groups. Whether it is appropriate for one or the other to be structured into agreement processes would depend on the social and cultural context.

- One of the key challenges interviewees identified was navigating the complex terrain between cultural norms and gender equality, and determining an appropriate role for companies and other actors in contexts where women’s rights are not upheld, or where cultural norms prevent women’s equal participation in political processes. (Section 2.3.2)
- Some interviewees thought that while more involvement by women could improve agreement processes and outcomes, gender equality would not overcome more critical problems with agreements that may prevent benefit sharing and development outcomes. Some of these include: inequity in power and resources of mining companies and communities, availability of skilled negotiators, time pressures to sign agreements, lack of legal rights for communities, lack of attention to implementation and governance, agreement complexity, and availability of information. (Section 2.3.3)
- Interviewees differed in their opinion of the industry’s ability to engage with women as potential beneficiaries of mining operations. However, most interviewees felt the industry as a whole had a long way to go in addressing the issue of gender and development. (Section 2.4)
- Generally inclusive, representative and participatory processes – supported by capacity building – were considered to be a good basis for gender inclusivity in agreement processes. However, interviewees reinforced the point that this approach on its own was not sufficient for ensuring women participated, that their participation was equal or that women were able to influence outcomes. (Section 2.5)

The report documents considerations in relation to the case studies (Section 3.1), including that:

- Each of the case studies was carefully designed so that the scope was workable and the data collected was meaningful, rather than covering the full set of project interests.
- Researchers were careful when opening up discussions on the topic of gender dimensions, particularly given the risk of backlash against women who chose to engage on this topic, in public or private. Nevertheless, it was one of the most important issues to engage in the field and researchers explored this tension in each of the studies.
- While it is important to focus on negotiation processes as a backdrop to any agreement, wherever possible, researchers sought insight into the gendered dynamics of implementation and monitoring, including how these dynamics had changed over the course of the project.
- The factors that interviewees perceived as influencing women’s involvement in agreement processes largely aligned with the literature. This was a good basis upon which to test whether (and how) these same factors played out in each of the case study sites.

As highlighted above, there is limited literature on the specific topic of interest, but ample literature on the broader topics of 'gender and development', 'gender and mining' and 'mining and agreement-making'. Research that establishes a broader base of knowledge on the specific topic of interest – which sits at the nexus of these literatures – will serve to improve policy and influence practice. Key suggestions for further research include:

- Research that establishes the link between women's participation in other initiatives as a pathway to participating in mining and agreement processes.
- Action research, where researchers 'shadow' agreement processes in real time, and contribute to the process at key points.
- Research that takes a stronger gender perspective. This project is cognisant of gender dynamics, but focuses on women's experience. There is an opportunity for future research to broaden this out to include more men's perspectives.
- Research that establishes a link between foundational processes such as baselines, social impact and risk assessments, assessments of human rights and other processes as a basis for increased women's involvement and gender-sensitive engagement and development strategies.
- Longitudinal research that documents some of the generational changes in women's leadership roles.
- Review of legislative requirements in priority jurisdictions to determine the degree to which requirements support women's participation and encourage equal opportunity in agreement making.
- Identification of case studies where different actors have successfully navigated cultural norms and calls for gender equality, resulting in improved participation of women in agreement processes.

Practitioner perspectives study

1 Introduction

There are several complex bodies of literature that relate to the specific topic of interest, but little on the topic of gender or women's participation in mining and agreement processes.¹ The research team completed an extensive literature review in an attempt to extract and distil relevant information from existing work. The review of the literature on the relevant topic areas – gender, development and agreement processes in mining – confirms that there is limited overlap between these topics.

There is a significant body of knowledge that relates to mining and agreements as a mechanism for acknowledging indigenous rights, addressing impacts and localising development benefits in mining², but little on gender and agreement-making, let alone insight into women's involvement in these processes. On the gendered impacts of mining, there is an established body of scholarly work that highlights the gendered nature of mining impacts and the nature of women's exclusion from engagement and development decisions³, but little of this literature relates directly to agreements. Likewise, there is existing work that seeks to highlight women's resistance and other strategies of mining's over development, but the focus tends not to be on agreement processes. In the broad and well-established field of gender and development, mining has not been a prominent focal point. There is virtually no literature about the development outcomes of particular agreements and beyond that, benefits that flow to women and their families.

Given the paucity of literature available on the topic, a series of targeted interviews with practitioners was included in the research design as a preparatory step for the case studies, which form the second stage of this research project. The research team completed interviews with 22 practitioners who generously gave their time for this part of the research project. Notably, interviewees held very different – sometimes divergent – perspectives on gender and agreement processes. While some broad-based commonalities were found within the data, the data largely reflects a multitude of perspectives and experiences. Wherever possible, divergences in opinion along the lines of region, nation, company or role are discussed throughout the report. In aggregate, the variability of the data highlights the complexity of the topic and the range of experiences and opinions that exist.

1.1 Report structure

The following section (Section 1.2) explains the approach to interviews and describes the process, including interviewee backgrounds, experience and the geographic spread of their work.

¹ There are only a few authors who have focused on the topic of interest and who are referenced throughout this paper. In particular, see O'Faircheallaigh (2011; 2012b), Macintyre (2002; 2007) and Hemer (2011). Other authors who have covered the topic in substantive ways include: Gibson and Kemp (2008) and Weitzner (2002, 2006).

² See for example Allbrook and Jebb (2004), Altman (2009), Crooke *et al.* (2006), Fidler and Hitch (2007), Gogal *et al.* (2005), Harvey and Nish (2005), Langton & Palmer (2003), Nish & Bice (2012), O'Faircheallaigh & Ali (eds 2008), O'Faircheallaigh (2003a; 2004; 2008) and Sosa & Keenan (2001). Two contemporary reports offering guidance on effective agreement making include the ICMM's Good Practice Guide: Indigenous Peoples and Mining (ICMM 2010) and the IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements (Gibson & O'Faircheallaigh 2010).

³ See for example, Bice (2011), Macdonald & Rowland (2006), Lahiri-Dutt & Macintyre (2006), Lahiri-Dutt (ed. 2011), the Mining, Minerals and Sustainable Development (2002) and the World Business Council for Sustainable Development (2002, pp. 205-13).

Section 2 presents findings, with references to literature where relevant, covering:

- the factors that interviewees perceive to influence gender dimensions and women's involvement in agreement processes (Section 2.1)
- perspectives on women's inclusion/exclusion in benefit sharing (Section 2.2)
- perspectives on the challenge of involving women in agreement processes (Section 2.3)
- perceptions of the industry's current ability to engage women (Section 2.4)
- strategies for increasing women's participation (Section 2.5).

The final section (Section 3) covers implications for the case studies.

1.2 Interview sample

The analysis presented in this report is based on the limited available literature and semi-structured interviews with 22 practitioners, scholars, representatives and other parties who have been directly involved in agreement processes in the mining industry (see Appendix A: Interviewees). Almost half the interviewees were women and two self-identified as indigenous. Interviewees were identified through CSR and MCA networks and also by referral from interviewees and other contacts. They were selected on the basis that they had first-hand experience in negotiating, advising, implementing and/or researching at least one agreement. Interviewees had different levels of focus on gender in their work. For some, gender had not been considered before. For others, while gender had been considered, it was not a specific focus. Only a few interviewees reported having a specific gender focus or a special gender advisory role.

The geographic spread of interviewees covers Australia (10), Canada (8), the United States of America (USA) (2) and Peru (2). Interviewees had mainly worked with agreements in Australia, Canada and Papua New Guinea (PNG) and to a lesser extent in Latin America (particularly Peru), USA, the Solomon Islands, Indonesia, Lao PDR, Mongolia and Ghana. This distribution reflects the fact that Australia, Canada and PNG have an established agreement-making approach to land access and benefit sharing between mining companies and communities. Interviewees had a variety of professional experience including industry, academia, indigenous representative bodies, consultant advisory or representative services, and as employed representatives of their own indigenous communities.

Some interviewees were involved in only one agreement, while others had been involved in a range of different agreements. Interviewees had been involved in a range of agreements and agreement processes including some of the longest standing agreements in Australia, re-negotiations of complex agreements for major operations, and early exploration agreements. Most interviewees had been involved in agreement processes in the past five years, and all had been involved within the last 10 years. Interviewees described a wide variety of gender dynamics within agreement processes. Some agreements had gender as an issue at the forefront of the process where men and women participated in separate, parallel processes, with male and female negotiators, advisors and representatives on both sides. In others, gender was not considered at all, but representation and participation was felt to be roughly equal. In other cases, interviewees reported that they had observed domination by men or, more rarely, by women.

1.2.1 Approach to data collection

Data collected during interviews includes interviewees' observations, anecdotes and opinions about gender dimensions and women's involvement in agreements. While the interview protocol used to guide the interviews canvassed a range of agreement processes, data largely relates to the 'negotiation' phase of the agreement process. This reflects the roles of interviewees and the general lack of attention on agreement implementation that has been reported in the literature.⁴

The aim of the research was not to collect empirical data or verify interviewee opinion, or to provide detailed discussion of individual agreements. This will be addressed to some extent in the case studies, where available data and contextual information relevant to particular agreements will be compiled. Although interviewee observations were occasionally conflicting, some general trends emerged indicating a number of key gender considerations in agreement processes. Findings are presented in the sections below. Where relevant, interviewee data is linked to references from existing literature in the mining, gender and development fields.

2 Findings: Interviewee perspectives

2.1 Factors that influence women's involvement in agreement processes

The literature about mining, gender and agreement processes suggests that the extent to which women participate in agreement processes is largely determined by the context in which agreements occur. In this sense, women's roles, attitudes towards and involvement in agreement processes can only be understood within their particular contexts. Interviewees identified a range of factors that influence the dynamics of inclusion and exclusion of women in agreement processes, including:

- cultural context
- socio-economic factors
- social status
- historical precedent
- legal context
- organisational context.

These factors, discussed individually below, align strongly with existing literature.⁵

2.2 Cultural context

Interviewees agreed that women's participation in agreement processes was a product of existing gender dynamics in the local culture, as well as the dynamics of the dominant society and the culture of the organisations involved, both company and community.

⁴ O'Faircheallaigh (2002; 2004) has consistently advocated for a focus on the implementation of agreements which can determine the success and sustainability of the agreement reached. In a review of 40 company-community agreements across Australia and Canada, O'Faircheallaigh (2003b) concluded that most agreements were ineffective and unsustainable due to poor implementation. For a detailed overview of the challenges and opportunities associated with the implementation phase of agreements, see AIATSI (2008, pp. 36-8), Allbrook & Jebb (2004) and Langton & Mazel (2008).

⁵ See O'Faircheallaigh (2011; 2012b).

Local culture

Many interviewees observed that where the local culture was highly patriarchal, women's participation tended to be lower, although not in all cases.⁶ In some situations, where the cultural context included distinct gender roles – described by one interviewee as “almost parallel worlds” – women tended to be excluded from participation in agreement processes and outcomes, such as compensation, employment and business development opportunities. In some of these contexts this was being addressed. Some interviewees described a range of parallel engagement processes for agreement negotiations whereby separate meetings were held for men and women, with male and female negotiators or advisors for each. The practice of separate yet parallel meetings was described by interviewees familiar with native title representative bodies (NTRBs) in Australia, where these bodies have a responsibility to ensure ‘group consent’. Still, interviewees indicated that this process did not necessarily mean that men's and women's views were considered equally in decision-making, and often that men's views were prioritised over women's.⁷ The issue of representation is further discussed later in this report.

In cultural contexts without such a strong distinction between gender roles, some interviewees observed women deferring to men in negotiation processes where both women and men were present. One interviewee thought that this may have been because women believed men to be more accustomed to negotiation.⁸ Both men and women were reported to believe that women tended to lack understanding about the potential negative impacts that mining could have, and were not able to strategise about impact mitigation measures. Several interviewees explained that in some cases, women had not participated in public decision-making before, so were at a disadvantage compared with men who had.⁹ Some interviewees noted that as women learned about agreement processes and became comfortable, they became more active over time, and that successive generations of women often took on a greater role.

Dominant society

Interviewees working with indigenous or ethnic minority groups indicated that, for these groups, the gender roles of the dominant society influenced agreement processes through the involvement of company personnel and, depending on the agreement scheme, representative bodies (such as land councils) and legal and government representatives. Interviewees observed that patriarchal post-contact, missionary or post-colonial culture involves a range of gendered impacts that can further limit women's participation in agreements, including women's loss of traditional rights to make

⁶ O'Faircheallaigh (2012b, p. 5) highlights a number of cases where, despite the patriarchal culture, women have played significant and direct roles at the negotiation table. For example, Indigenous women played a major role during the Argyle diamond mine agreement in Australia. Kim Doohan expands upon this case, in her book ‘Making Things Come Good, Relations between Aborigines and Miners at Argyle’ (2008).

⁷ Cornwall (2003, p. 1329) also stresses this point, emphasising that it is not only how and whether women raise their voices within the group context but also if anyone is really listening. With reference to Indigenous women's involvement in native title claims, Langton (1997) argues that simply placing women into the process does not guarantee adequate representation of Aboriginal women's interests due to the gender rules relating to Aboriginal ritual knowledge.

⁸ Macintyre (2007, pp. 55-6) suggests that during the exploration and negotiation phases of the Bougainville and Lihir mines in Papua New Guinea, local men dominated formal meetings as the women were both unfamiliar and inexperienced with such negotiation structures.

⁹ Agarwal (1997) elaborates on familial constraints to women's engagement in decision-making with reference to time, official male bias, social constraints about women's capabilities and roles, the absence of a ‘critical mass’ of women, and lack of public speaking experience.

decisions about land.¹⁰ This was linked to women's invisibility in the dominant culture (i.e. men did not include women because women were marginalised in the colonial culture), further exacerbated by the position within their own culture. Neither the women nor the men knew how to go about negotiating a gender balance. Interviewees also mentioned 'the church' as a significant influence on gender relations in some contexts, particularly in the Pacific.

2.2.1 Socio-economic factors

Interviewees attributed several different socio-economic factors to what they perceived as women's inhibited involvement in agreement processes. Many of these factors are mentioned in the gender and development¹¹ and gender and mining literatures. Issues included lack of education, poor health, early motherhood, carer responsibilities (for children, grandchildren and elders) as well as lack of time, autonomy and recognition of women's economic roles. In particular, personal economic independence was identified as a key factor influencing women's inclusion/exclusion in mining and agreement processes. Several interviewees suggested that women with no economic independence tended to be less active in public life and in agreement processes.¹² In a few cases, however, the relative socio-economic disadvantage of men due to endemic poor health (largely related to alcoholism and drug use), has meant that men who would usually participate in agreement processes were unable to and women had 'stepped in'.¹³

Some participants explained that there was often a general perception in the company or community that women were not concerned with economic development, but said this was far from the case in reality. Women were frequently reported to be interested in ensuring agreements included provisions related to:

- training for employment
- training, capacity building and access to finance for business development
- local supply chain initiatives
- considerations about environmental impacts that could affect farming and hunting and other productive activities
- protection/development of traditional livelihoods.

Beyond economic interests, interviewees reported observing some general trends in terms of women's interests in agreement processes. Recognising that it is not always possible to generalise, that some women can have different interests from other women, and also that women's interests can be the same as men's (or some men's), interviewees said that women were more often concerned than men with:

¹⁰ Stege *et al.* (2008) explore tensions around women's land tenure, management and access in matrilineal societies in the contemporary context.

¹¹ Scholars within the gender and development (GAD) literature argue that 'women' are not a homogenous group, but are socially stratified across age, class, ethnicity, culture and along gender relations (Mikkelsen 2005, p. 8). See Dankelman (2002) for an in-depth discussion.

¹² Building upon their tradition of work on the economics of gender (see for example, the Engendering Development Report (World Bank, 2001), the World Bank recently released the 'Gender Equality and Development Report' (World Bank, 2012). With the aim of understanding how men and women experience gender in their everyday lives, the results drew upon a cross-section of demographics across 19 countries. For an overview on how women's earning opportunities and assets promote their bargaining and decision-making power on a global scale, see World Bank (2012, pp. 153-5).

¹³ For a more detailed discussion about women's involvement in the Western Cape Communities Co-existence Agreement where men's health had a significant impact on the process, see O'Faircheallaigh (2011; 2012b).

- intergenerational aspects (e.g. putting resources aside for future generations)
- education and health
- governance
- managing household income to support families.

This concern was evident to interviewees from observing women’s focus on these issues in meetings, and their willingness to spend time discussing and planning rules and arrangements for advancing of these issues.

A few interviewees described cases whereby women were reluctant to speak about their rights and interests in public forums due to lack of confidence or because they were not fluent in the language that the meeting was being conducted in (usually the national language) and had been mocked by men for making “mistakes”.¹⁴ Interviewees indicated that such embarrassment could prevent both men and women from participating in public forums, but indicated that because women tended to have lower levels of formal education they were disproportionately affected.¹⁵ Other interviewees observed women being told that they “talked too much” or “it wasn’t their place”, or that women “couldn’t understand” because they were not educated. It was not always clear from interviews as to whether this information came from women, or was observed by interviewees, or both.

2.2.2 Social status

Interviewees mentioned a number of sub-groups of women, where the intersection of gender with other factors resulted in exclusion from agreement processes:

- middle-aged women who were yet to acquire the status of ‘elder’ (and in some cases were in communities where there had been sufficient disruption such that it was not clear how they would achieve a position of status)
- young women and young mothers
- women (and their families) who had married or migrated into the community
- women in male-headed households where women did not have the right to participate in agreement negotiations, and were not able to influence informally
- female-headed households.¹⁶

The diverse views of indigenous women or women from other minority groups were often not considered by those involved in agreement processes because they saw women as a homogenous group.¹⁷ While indigenous women had some issues in common such as culture and effects of colonisation, how they experienced those issues depended on their age, socio-economic status and other diversity factors.

¹⁴ Agarwal (2010, p. 5) suggests that a women’s capacity to meaningfully participate in public forums requires both *presence* and *voice*. Mohanty (2002) emphasises however that even where women do have *voice* within meetings, without genuine male support, women’s input will not necessarily be influential.

¹⁵ The topic of women’s education and empowerment is extensively covered within the gender and development literature; see for example Beaman *et al.* (2011). Shoaib *et al.* (2012) suggests that educational achievements significantly influence the capacity of women to influence decision-making outcomes within private and public spheres.

¹⁶ Mikkelsen (2005, p. 6) comments on the invisibility of women in agriculture and natural resource management as social researchers and government bodies typically assume men as the heads of the household and owners of property.

¹⁷ Mahy (2011, pp. 51-2) suggests that there is a tendency to homogenise the experiences of women affected by mining. Within the broader gender literature, Hankivsky (2005), Squires (2005) and Walby (2005) argue that the concept of gender is invariably tied to the male-female binary and therefore limited in its ability to reflect differences among women.

Where women were involved in the agreement process, interviewees identified two groups that had prominent roles. One group was women who had spent time away from their communities working in professional roles, for example, as lawyers, or had achieved a higher status through other means. Although these women were generally described as having critical points of connection with the community, one interviewee noted that they might have lost touch with the perspectives of local women because they had been away, often for extended periods. The second group was women who had a high status in their community – either as elders or gained from strong traditional knowledge. Some interviewees described these women as outspoken and influential leaders in agreement processes. Often, however, these voices were only heard in the background. According to one interviewee, these women had “a strong voice, but not a public voice”.¹⁸

2.2.3 Historical precedent

Several interviewees perceived that there were higher levels of women’s participation in agreement processes where there was historical precedent for their involvement in other political processes. A more gender-balanced approach in agreement processes was often observed when there had been a history of women’s involvement in community-level governance or where women had held official positions within government or associated agencies. For example, at Voisey’s Bay mine in Canada, there has been a long history of indigenous and non-indigenous women in local and provincial government¹⁹, although this is not necessarily the case in other Canadian agreements.

The existence of women’s organisations²⁰ sometimes influenced women’s involvement in agreement processes, particularly in Melanesia.²¹ Although the presence of these organisations often reflected a culture that acknowledges women as a group, this did not necessarily translate into recognition of women’s rights as landholders or citizens or equal involvement in agreement processes.²² In some contexts, while women’s organisations were seen to support the general notion that women should have a voice in political processes, they were not considered to be an appropriate way of organising for negotiation, as agreements concerned land use and the women’s organisations did not hold land.

2.2.4 Legal context

Interviewees agreed that the legal context provides the basis for upholding the rights of indigenous and land-connected peoples²³ as well as women’s rights.²⁴ Currently, there is no known jurisdiction

¹⁸ O’Faircheallaigh (2012b, p. 7), Gustafsson (1998) and Rose (2006) recognise that within some Indigenous societies, women traditionally influenced political decision-making and economic and ritual exchange in the private setting, leaving public negotiation activity to the men. Other scholars have highlighted the challenges associated with women taking public roles and the backlash that they may receive as a result of stepping outside what is considered their ‘morally valued work’. With reference to a case study from Lihir Island in Papua New Guinea, Hemer (2012, p. 11) suggests that other women in the community can be critical and jealous of women who argue for equality in the realms of politics and employment.

¹⁹ See O’Faircheallaigh (2011; 2012a) and Gibson & Rozelle (2006).

²⁰ Most interviewees did not have significant involvement with women’s organisations.

²¹ See for example Hemer (2011) and Macintyre (2002; 2003).

²² Macintyre (2003) overviews the benefits and limitations of Petztorme, an active women’s organisation that aims to support local women in addressing the socio-economic impacts of the Lihir gold mine in Papua New Guinea. Hemer (2011) compares Petztorme with another women’s organisation in Lihir and considers the degree to which the women’s organisations have advanced women’s interests in negotiations with the mine.

²³ “Land-connected peoples” refers to those peoples who hold customary ownership of land, but do not identify as Indigenous, for example, in Papua New Guinea.

²⁴ In 1979, the United Nations adopted the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). According to the World Development Report (2012), more than thirty years later CEDAW is still the most widely

whereby gender equity is a specific requirement for land use agreements in mining. Some mining legislation does specify requirements for consultation with all landowners or group consent, which provide a basis for including women.²⁵ Some of these requirements specify the inclusion of minority or marginalised groups. However, women are rarely in the minority in terms of population and positioning them as ‘marginalised’ does not recognise their productive role in society and their potential contributions to agreement processes.²⁶

In general interviewees had worked in jurisdictions where indigenous rights were recognised by the State, which provided a framework for engagement between companies and community groups. There were a few noted examples where national legislation recognising indigenous peoples’ rights to land also included reference to equal rights for women (e.g. the *Philippines’ Indigenous Peoples Rights Act of 1997*).²⁷ The Constitution of PNG also provides for equal rights for women. However, most interviewees felt that the legal requirements for a governance or representative structure for agreement parties could often encourage gender bias. These government-mandated structures are frequently the first point of contact for mining companies in agreement processes and so are crucial for setting the agenda for agreement processes. These groups include representative bodies such as band or tribal councils in Canada or the applicants of a native title claim (or their prescribed body corporate) in Australia. Where these organisations do not have equitable gender representation, or processes that provide equal opportunity for women and men to participate, this can lead to exclusion from agreement processes. For example, some interviewees gave examples of all male representative groups rejecting suggestions for wider consultation, therefore excluding women from the process.

A few interviewees noted that associated agreement processes, such as the environmental review process in Canada, could also be ‘gender blind’ in that they could fail to identify gendered impacts or opportunities, which could preclude women’s issues from being brought to the table in agreement negotiations. On the other hand, there were examples of these processes surfacing gendered impacts which were then recognised in agreements, as was the case in Voisey’s Bay in Canada.²⁸

Interviewees suggested that where women’s rights were not upheld by law more generally, it was difficult to bring gender considerations to the fore in mining and agreement processes.²⁹ For example, agreement negotiations were often based on land ownership where voting rights were tied to land. Where men typically held land title, women’s right to participate in decision-making processes became more limited.³⁰ Research also suggests that even where women do hold landowner status,

supported human rights treaty and vehicle for monitoring and advocating for gender equality. For an overview on the rising global consensus on women’s rights, see the World Development Report (2012, pp. 57-9).

²⁵ With reference to women’s rights in Papua New Guinea, see Macintyre (2007, pp. 55-6).

²⁶ Statistics from the World Bank (2012) highlight that demographically women tend to make up the majority of the population as they live longer in almost all societies.

²⁷ The Act states that: “The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to Indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.” This legislation also includes the right to ‘free, prior, informed consent’ to development activities such as mining; however, lack of capacity and political will inhibit enforcement.

²⁸ See O’Faircheallaigh (2012b) for an overview of Innu/Inuit women’s influence in the Voisey’s Bay agreement negotiations.

²⁹ For a discussion of women’s voices and women’s rights in Papua New Guinea, see Macintyre (2007, pp. 55-6). On human rights and the duties of mining companies, see MacDonald (2006, p. 313).

³⁰ See Garvin *et al.* (2009) and Wielders (2011).

they are not always included or acknowledged during mining and agreement processes.³¹ This is not to say that women do not have a voice within their family or clan groups, but these processes are less 'observable' and do not necessarily guarantee that their perspectives are represented, or represented in an appropriate way. Generally speaking, interviewees indicated that women's rights and interests were more likely to be represented in agreement processes when the legislative context/basis on which the agreement was negotiated and ratified was based on group consent rather than votes by landholders or heads of households (usually men).

Interviewees explained that even though the legal context set an important backdrop, it did not guarantee that either indigenous and/or women's rights were upheld in practice when other contextual factors came into play. For example, even where there was an equitable system of property rights that enabled both men and women to own, sell, and pass on land, men often dominated 'landowner councils' or other landowner representative bodies that were involved in agreement processes.³²

2.2.5 Organisational context

Corporate culture

Several interviewees discussed aspects of organisational or company culture which influenced gender dynamics of agreement processes. They noted that mining companies had been historically male-dominated and tended not to be diverse, particularly in relation to gender, which itself could limit understanding of the benefits of diversity for the business.³³ Interviewees perceived that, to counter this, some companies used external consultants with an in-depth understanding of the local culture to challenge corporate views of the community in order to generate better outcomes and processes. However, external expertise was typically contracted on the basis of understanding culture and local context, not necessarily an in-depth understanding of gender dynamics.

Professional roles

Several interviewees commented that the legal profession dominated the agreement-making space. They observed that this tended to narrow the dialogue process and resulted in agreements that were based on a narrow set of issues rather than broad consideration of issues that were of importance to companies or communities. Other interviewees suggested that lawyers and other professionals (such as professional negotiators) took instruction from their clients, rather than guided the process, and it was the company or community that widened or narrowed the scope of negotiations. Interviewees advocated the involvement of specialist external advisors and company professionals with expertise in a range of issues including gender, land management, heritage, infrastructure, housing, community, and local governance. Other research indicates that these professionals are not always central to the negotiation phase of the agreement processes itself.³⁴

³¹ For example in the matrilineal societies of Bougainville and Lihir in Papua New Guinea, women have been excluded from formal mining agreement processes despite being the traditional land owners (Membup, 2003; Macintyre, 2007).

³² For examples where Indigenous women have dominated landowner representative bodies, see Gibson and Kemp (2008), Kambel (2004, p. 1) and Hipwell *et al.* (2002, p. 12).

³³ This view is consistent with the findings of Kemp & Pattenden (2007) who indicate that the extractive sector needs to implement systems and process improvements to directly address identified gaps with respect to gender diversity.

³⁴ For more on the role of experts on the negotiation team, see Gibson & O'Faircheallaigh (2010, pp. 65).

Several interviewees said that they thought the gender composition of company staff could be a factor that influenced women's participation in a range of agreement processes and outcomes. For example, some interviewees observed that members of the negotiation team (including barristers and senior lawyers) were predominantly male, although there was usually a mix of male and female professional staff involved in the agreement more broadly. Interviewees generally felt that mixed teams were more likely to bring a balanced perspective to agreement processes that had previously (particularly for companies) been almost exclusively male. Many interviewees suggested that this was changing, and that female representation in company staff was increasing, which may have some spill-over effects on agreement processes.

One interviewee noted that, while there may be women working as part of land council or company negotiating teams (lawyers and anthropologists), this did not necessarily translate into increased women's participation from within the community. Some interviewees suggested that having an all-male land council or community relations team risked getting caught up in male culture, particularly where men's culture was dominant (or where there was a focus on male sacred knowledge)³⁵, and that having articulate and aware women on the team could help maintain focus on all community members. An interviewee noted one example where a prominence of women in a community relations team resulted in the project/operation being better placed to identify women's issues, and better understand how women could be engaged in the negotiation process.

Corporate policy

There was general agreement among interviewees that women's participation was influenced by participatory engagement processes associated with the agreement more than a gender focused process. Interviewees suggested that women were more able to get involved when there was a commitment to ensuring open and participatory engagement because, by definition, women of all backgrounds would be included. In theory, participatory processes are underpinned by a commitment to providing appropriate resources, including time, funding and other support mechanisms to support the participation of diverse groups, including women. While it was not asked as a binary question in the interviews, many interviewees commented that encouraging participatory processes that were inclusive of gender and other diversity considerations would result in stronger agreements as opposed to pushing gender over and above broad-based participation.

Interviewees who had worked with a range of companies observed that company use of participatory methods was driven by company attitudes towards relationships and building a broad base of support. Some companies approached agreements as long-term mechanisms for engagement that provide structured processes and explicit terms for dialogue between parties based on agreed principles. These companies saw relationship-building as part of all phases of the agreement process, not just in terms of signing the agreement itself. Interviewees observed that these companies tended to be more inclusive of women in their engagement practice.

Some interviewees, however, felt that the prevailing understanding in the minerals industry was that agreements were an initial step that needed to be negotiated between company and community. They felt that a company ought to follow the lead of the community representatives in the negotiating

³⁵ For more on the dominance of male culture as 'silencing' the gendered voice within the extractive industries, see Lahiri-Dutt (2011).

process (even where this was not inclusive of the wider community) and that relationship-building should happen after an agreement was signed. Several interviewees indicated that comprehensive agreements with strong community support were seen to be valuable, primarily due to the stability, certainty and protection that they provided to a company's business assets. However, broad-based engagement should be the starting point.

2.2.6 Agreement processes

As many interviewees pointed out, there were a range of processes that influenced an agreement, such as knowledge gathering processes (baseline studies, environmental impact studies (EISs), social impact assessments (SIAs) and community-based research), consultation processes, agenda-setting, decision-making, implementation, governance and re-negotiation. In some jurisdictions some of these processes are required by law, or are expected in a particular context. Similarly, company policies and practices can shape the agreement process, as can the involvement of third parties such as land councils or representative bodies. This section examines some of the 'process' aspects of agreements that can impact women's participation and benefit.

Knowledge base

Interviewees indicated that companies with processes that established a solid understanding of community context were better placed to enable women's participation. A good understanding of context and culture helped ensure that preparations and the negotiation itself were designed in a manner that foregrounds the rights of women. For example, some interviewees mentioned making special efforts to hold meetings at known 'women's sites' where women's right to speak and decide could not be questioned by men, or where their culture permitted women to be more vocal than in other places. If companies, negotiators, cultural advisors, representative bodies such as land councils or band councils³⁶, or other indigenous parties to an agreement had a good understanding of these factors they could encourage processes that empower women to participate, or otherwise elevate women's needs and concerns.

In some cases, this happened behind the scenes (i.e. not as part of the formal negotiation process), with negotiation participants seeking out women's opinions by talking with women one-on-one and then bringing forward their ideas for consideration by a group.³⁷ In these circumstances, women would often not want their name attached to the idea when it was presented to the group, preferring to remain anonymous. Interviewees who had observed this felt that it was most likely due to women's concerns about being dismissed as unimportant or reproached for interfering, potentially facing domestic or sexual violence as a consequence in extreme cases. In other cases, interviewees had been involved in agreements where special gender or cultural advisors were able to assist companies in understanding community processes, which helped to ensure that important issues for women were given sufficient consideration, or that specific processes could be undertaken/modified to empower and include women.

³⁶ Local-level First Nations' legal unit of government in Canada.

³⁷ In a broader study examining women's formal and informal decision-making influence and processes, it is suggested that women prefer expressing their individual perspectives as a collective voice (World Bank, 2012, pp. 181-2). For a discussion on women's influence on negotiations from 'behind the scenes' at the Argyle Diamond mine, see Doohan (2008).

Several interviewees suggested that inadequate understanding of local context, culture and history inadvertently excluded women.³⁸ Usually this was mentioned in relation to company approaches to agreements, but a number of interviewees noted that legal and government processes could also be ineffective in terms of including women. For example, the circumstances under which different groups of people were comfortable and confident expressing their opinions often depended on the anticipated outcome of that expression. Misunderstanding these circumstances or not considering them could inhibit the effectiveness of consultation processes. A few interviewees explained that some people felt that it was appropriate to express an opinion about an issue, but not if their opinion would be seen as an endorsement of a particular position on behalf of their community. Without understanding the factors that influenced how comfortable different women felt or empowered women to participate, interviewees felt that it was easy for agreement processes to unintentionally end up in a “male domain” which excluded women.

Engagement processes

The agreement processes can be adjusted in order to take into account the range of factors that influence women’s participation. Tailoring the process appropriately requires understanding the community context and the factors described above. For example, several interviewees suggested that women’s involvement in formal processes may put them in a difficult position, but by allowing for a mix of formal and informal engagement, women were more able to influence processes and outcomes. The reasons that formal processes could be difficult for women included the need to behave according to cultural norms and a lack of confidence or embarrassment at public speaking or speaking in a second language, as discussed above. Putting methods in place that were sensitive to these issues (e.g. scheduling smaller group/individual consultation, conducting meetings in local languages or with sufficient translation) could reduce women’s exclusion, or indeed, encourage inclusion. Capacity development for encouraging inclusive processes was thought to be beneficial (discussed further in Section 2.6.2).

Governance structures

Interviewees believed effective governance structures were a key component of successful agreement implementation and were another opportunity for women to participate in decision-making and in the distribution of benefits. Interviewees provided examples of trusts, funds and coordinating committees that were chaired by women, or had significant female membership. Some interviewees also gave examples of governance structures which required equal male and female representation (e.g. at Rio Tinto’s Argyle diamond mine in Western Australia).

Interviewees had differing views on whether women’s participation increased during the implementation of agreements, and how influential this was on development outcomes.³⁹ Interviewees agreed that there were several examples of women playing significant roles in the implementation phase of agreement processes, and some interviewees thought that there was a

³⁸ Drawing primarily on forestry management case studies in India, Cornwall (2003, pp. 1329-30) highlights a number of examples where organisations failed to understand the local context and, as a result, did not capture the gender perspective in participatory development processes.

³⁹ O’Faircheallaigh (2012b, p. 14) suggests that a complete analysis of the participation of women in the negotiation of agreements should focus on processes that set negotiation agendas and priorities prior to and during negotiations, and the ongoing bargaining post agreement. Women may for example play a significant role in shaping organisational structures established as a result of a negotiated agreement.

general trend of women being more involved in governance processes. However, several interviewees felt that many of the same patterns of exclusion from negotiation processes continued in the governance and implementation phases. Again, some interviewees suggested that there were cases where women were present on boards or governance committees, but that the women consistently deferred to their male colleagues. Reasons for this included cultural inappropriateness of voicing an opinion, poor literacy, and low levels of capacity to engage in strategy, planning and negotiation.

Timeframes

Several interviewees noted that often the timeframes in which agreements were expected to be negotiated did not allow for adequate consultation and organisation of communities, and this affected the quality of the engagement process and the agreement itself.⁴⁰ Timeframes were often determined by company approval processes, but also by the regulatory context.⁴¹ Some interviewees felt that pressure to 'make a deal' quickly could come from male community negotiators. Sometimes this was seen as a tactic to deliberately exclude women or those not in a position of power (i.e. by saying that there was not enough time to undertake more inclusive consultation). Some interviewees highlighted that restricted timelines for negotiation tended to affect women more significantly than men because of their domestic and caring responsibilities.⁴² Several interviewees added that agreements that were rushed provided a less secure basis for the agreement and the ongoing relationship between the mine and the community. Although all community members could be affected by lack of time, women may have experienced this disproportionately if they had historically been excluded from formal governance processes.

2.3 Women's inclusion/exclusion in benefit sharing

Perspectives on the extent to which women were able to benefit from the outcomes of agreements varied among interviewees. Interviewees generally acknowledged that men received more economic benefit from agreements than women.⁴³ These benefits largely include employment and business development. They also noted that men tended to control revenue from compensation monies and other 'rents' that flowed from companies to communities.⁴⁴ Where there was an existing culture of

⁴⁰ Drawing on the Argyle and Comalco negotiations, O'Faircheallaigh (2012b, p. 16) highlights that generous timeframes allocated to the negotiation process served to facilitate significantly improved opportunities for women's participation.

⁴¹ Under the *Australian Native Title Act 1993 (Cwlth)*, native title claimants have the 'right to negotiate' with mining companies about proposed developments which may impact native title before a mining tenement can be granted. Section 35 of the Act, however, allows any party to negotiations apply to the National Native Title Tribunal for arbitration if six months have passed since the original notification. This means that companies could potentially prolong negotiations for six months before requesting arbitration, which has historically granted the tenements to mining companies resulting in increased pressure for communities to come to a decision quickly (see for example Corbett & O'Faircheallaigh, 2006).

⁴² Irrespective of income, women continue to bear a disproportionate responsibility for housework and care in most countries. In consideration of both formal and informal activities, women typically work more than men, reducing their time to engage additional activities (World Bank, 2012, p. 19)

⁴³ One interviewee explained that "where [agreements] are used to allocate money to individuals, the percentages allocated to women are typically lesser than those allocated to their brothers, husbands and male cousins". The interviewee described a specific example where, in a large, landowning family at a PNG mine, the brothers received an average of 10 times more than their sisters in royalty payments.

⁴⁴ According to findings from the Pacific Financial Inclusion Programme (Chibba, 2009), households tend to have improved overall wellbeing when women control financial assets due to their capacity to effectively manage household expenditure.

domestic violence against women, interviewees reported that cash distribution to community members may have resulted in increased violence against women, with severe detrimental effects.⁴⁵

Interviewees noted several outcomes that benefitted some women, such as the development of institutional capacity in some communities, largely as a result of participation in agreements. In some cases, women's involvement in agreement processes triggered subsequent involvement in community decision-making more broadly, even in areas where women had not previously been active. Some women benefitted from funds specifically allocated to women's law and culture. Several interviewees suggested that women had been influential in discussions about how benefits should be distributed, such as pushing for education, health or scholarship funds rather than new trucks or community buses, but noted that this had not necessarily led to gender-equitable distribution of benefits.⁴⁶

Some agreements include specific provisions for women, such as quotas for employment and training programs, for cultural and environmental monitoring and for family health projects.⁴⁷ The Voisey's Bay project in Canada is noted for its strong processes which support women's access to education and training in non-traditional roles. These requirements became part of the agreement because the community wanted to ensure that women had access to the high-paying, year-round job opportunities that tended to be in traditionally male-dominated areas. Preferential hiring for community women was codified in company procedures as a method for overcoming the range of barriers that women face in accessing this type of work, including discrimination in the hiring process, access to training programs, access to child/elder care, women's own perceptions of their ability to work in non-traditional roles as well as on-the-job support and effective zero tolerance discrimination and harassment policies in the workplace.⁴⁸ This process has had a great deal of success, with approximately 15% female employment, in roles from entry level to supervisory level. Several interviewees noted that women's employment was a good example of an area where some companies and operations had achieved significant outcomes with concerted effort. They also noted that, in part, these efforts were also motivated by a lack of skilled tradespeople in the mining industry generally. The focus on female employment in mining was also said to be driven by the mining industry's 'boom' cycles.⁴⁹

The factors that were seen to contribute to the success of this and other similar programs included:

- dedicated implementation managers from the community who followed through the recruitment process with each applicant, gave active attention to issues that affected retention and developed strong networks within communities in order to identify suitable individuals

⁴⁵ While some studies have indicated that women's increased income and assets base may lead to a reduced risk of domestic violence (Agarwal & Panda, 2007; Koczberski, 2002), others have suggested that there is no such correlation (ICRW, 2006; Swaminathan *et al*, 2008).

⁴⁶ In a discussion on how women might experience benefits through employment at the mine, Parmenter (2011) notes several challenges associated with Indigenous women's experiences at Century Mine. For a detailed list of the gendered nature of mining impacts and benefits see Rio Tinto (2009, pp. 83-6).

⁴⁷ For example, the Argyle Participation Agreement requires funds to be allocated to separate men's and women's "Law and Culture" funds; and the Snap Lake Diamond Project Socio-Economic Agreement is "required to provide onsite literacy programs to its employees and to promote the equal participation of women in all aspects of the project".

⁴⁸ Kemp & Gibson (2008, p. 106) outline key drivers that are promoting extractive industry companies to strengthen their gender focus both internally and in their work with external stakeholders.

⁴⁹ On the mining boom and other drivers motivating companies to increase female employment in mining see Kemp & Pattenden (2007, pp. 126-8).

- women’s own strong family networks which could provide child/eldercare support
- provincial government backing of the initiative.

Agreement parties reviewed employment data for project employees and contractors monthly. Because the data are disaggregated according to gender and indigenous status (local and non-local), the agreement parties can plan for targeted training and career development programs. Many of the leading mining companies have had similar success with targeted women’s employment programs, some with particular programs for indigenous women.⁵⁰ Sometimes these programs sit outside agreements. Several interviewees cautioned against simplifying women’s interests by simple quotas and “tacking on” women’s projects in an effort to improve outcomes. Doing this had the tendency to overlook the complexities of women’s intersecting interests, such as family, church or community cohesion.

2.4 The challenge of involving women in agreement processes

Previous sections provided interviewee perspectives on gender and agreement processes and explored some of the factors that influence women’s involvement. This section presents interviewee perspectives on the challenges associated with negotiating agreements that reflect women’s rights, interests and needs, promote equity of outcomes and involve women in agreement processes directly and indirectly.

Interviewees raised a variety of issues, including the challenges of:

- formal and informal representation of women
- tensions between cultural norms and gender equality
- other prevailing challenges in agreement processes.

2.4.1 Representation

Interviews centred on women’s ‘involvement’ and ‘inclusion/exclusion’ in agreement processes and outcomes. During the course of the interviews it became clear that some interviewees based their responses on ‘representation’ as an indicator of inclusion, whereas others considered inclusion to extend beyond formal representation. Quantitative measures of women’s representation and participation can be poor measures of equality or empowerment as they can simplify and render invisible other factors contributing to gender-based inequality.⁵¹ During interviews, CSRSM researchers asked questions to clarify understandings of representation and participation however it was not always possible to clarify these kinds of assumptions. Several interviewees reminded researchers to take care when discussing ‘exclusion’ during the field research, as this would be defined culturally.

Notwithstanding the challenge of surfacing interviewee’s assumptions in a rapid interview scenario, interviewees raised several considerations relating to representation, including:

- women’s presence at the negotiating table
- misinterpreting women’s absence from the negotiating table

⁵⁰ For example, the Queensland Resource Council (QRC) in Australia lists specific recruitment practices and career development programs adopted by extractive industry companies in Queensland (QRC, 2011).

⁵¹ See Hancock *et al.* (2011) for a discussion of the utility of quantitative measures of equality and empowerment, and suggestions for alternate methodologies.

- focus on family interests
- men representing women's interests.

Women's presence at the negotiating table

Women's presence at the negotiating table was one of the ways in which women's participation in agreements could be observed. Interviewees reported a variety of configurations of formal negotiating teams, including several instances where women had been lead negotiators for both company and community⁵² or members of the formal negotiating team, instances where a negotiating team was structured to include equal numbers of women and men, as well as several instances where negotiation teams had been all male.⁵³ Several said that they had seen women's absence from negotiations acknowledged by men, but commented that responses to this varied. In some cases, realisation of women's absence led to changes in process whereby women were engaged, but in the majority of cases women remained excluded.⁵⁴ Some interviewees believed that mixed teams were likely to be more balanced in terms of their ability to represent a range of interests.⁵⁵

In discussing the methods for selecting representatives for formal negotiations, some interviewees suggested that the focus was simply on selecting individuals who were considered to hold the requisite skills, and gender did not generally register as one of the criteria. Some interviewees suggested that this was perhaps because women were being drawn into the process anyway, or there was no overt exclusion or marginalisation (which may have still resulted in biased outcomes).⁵⁶

Selection of representatives was frequently seen to reflect the cultural norms of the host community, where women would "let the men do the talking" and the women would take an advisory type of role that did not necessarily involve them being at the forefront of the discussions. Interviewees observed that, in situations where men traditionally held the leadership roles in communities, they also tended to be better represented at the negotiating table. Sometimes this was thought to be because men were perceived to have stronger negotiation skills, and sometimes because of their perceived power. Several interviewees who represented communities as negotiators said they did not tend to question or challenge the cultural positions taken by the community in terms of who they nominated as representatives and the processes that they used to engage within the community.⁵⁷ These interviewees stated that their focus was on the community as a whole.

Interviewees acknowledged that negotiators, whether they were men or women, had a complex and difficult role, but they also noted a range of issues with specific relevance to women. A few

⁵² Gibson & O'Faircheallaigh (2010, p. 115) refer to a case where female negotiators spoke directly with the company CEO about youth suicide in their community leading company representatives to have an entirely different understanding of community demands.

⁵³ Simatauw (2002, pp. 38-9) cautioned that where women are marginalised or absent during negotiations, the agreement is more likely to benefit men and undermine the role of women within the community. With reference to Indigenous groups in Australia, Langton (2008, pp. 14-5) suggests that in some cases, men have actively sought to exclude women from agreement negotiations.

⁵⁴ With reference to Indigenous groups, Gibson & Kemp (2008) suggest that in some cases, men have actively sought to exclude women from agreement negotiations.

⁵⁵ Some authors caution that women's presence at the negotiating table is not necessarily reflective of their capacity to have voice within the process (World Bank, 2001; Cornwall, 2003).

⁵⁶ On the topic of "vesting authority in a lead negotiator" see Gibson & O'Faircheallaigh (2010, p. 169) for an outline of factors indicative of appropriate community leaders.

⁵⁷ Macintyre (2007, p. 55-6) suggests that in Papua New Guinea, mining company representatives have not sought to question community representation for fear of offending custom.

interviewees suggested that there was difficulty in finding female negotiators because highly capable women in communities were often too busy with a range of other responsibilities to be able to free up the time to commit to being a negotiator.⁵⁸ Other interviewees perceived that the expectations for women as negotiators was sometimes higher than for men – “If you put a male on a negotiating team, people have quite often got low expectations of what he’ll achieve, and all of a sudden you put a woman on there and she’s got to represent everybody”. Several interviewees noted that it was unfair to expect women to represent all women, just by virtue of their gender – the same was rarely expected of men. Some interviewees said that female negotiators have described feeling “burdened” by the expectation from their own communities that they represent women’s interests, and feeling like they were supposed to be the sole conduit of women’s interests to the negotiation process because other women were not prepared to back them up or were not able to make their own voices heard through other channels.

Misinterpreting women’s absence from the negotiating table

While women’s presence in formal negotiation processes was considered insufficient to ensure appropriate representation of women’s rights and interests, several interviewees cautioned equating women’s absence with their exclusion from input into agreement negotiations. They stated that women’s roles within their communities were complex and they were often highly involved in a wide range of issues. Although the power that they exerted internally may not have been expressed in an easily visible manner, they did play an integral role in shaping community views and values, including in relation to agreement-making. Some interviewees gave examples of strategic inclusion of women (particularly respected elders) in negotiation processes to help drive home the significance of some issues for communities; for example, discussions about the potential impact of mining operations on some traditional activities, or on families.

Focus on family interests

Interviewees also felt that it was uncommon for women involved in consultation about negotiations to raise the issue of gender inequality in agreement processes as a standalone concern. While the issues women and men raised were often gender-related, gender itself was often not an obvious organising framework. Interviewees perceived that women were more concerned with arguing for their family or their traditional group, than for women as a group. Several interviewees noted that the focus on family groups was common within the communities in which they had worked, and that often the distinction between women and men was not the basis for organising within the community.⁵⁹ Women could be just as vocal about work opportunities for their husbands and sons as the men were. On the other hand, interviewees thought that if the issue of gender was raised, it was most frequently raised by women.

Men representing women’s interests

Some interviewees observed that men’s ability to represent women’s interests varied. In some cases men were able to represent and advocate for women’s rights and interests, at least in terms of their practical needs. Interviewees did note that, where women were not directly involved, the

⁵⁸ See Moser (1989) for a fuller discussion on the triple burden of women in developing countries.

⁵⁹ In a World Bank study on gender and social inclusion in Lao PDR, the authors report on a similar dynamic (Callander *et al.*, 2009).

conversations about women's interests tended not to be as refined or sophisticated, and did not generally extend to considering women's strategic gender interests, such as involvement in decision-making or empowerment.⁶⁰ Several interviewees had heard complaints from women that their interests and opinions were either ignored or misidentified by male representatives in formal negotiations.⁶¹ Interviewees reported that a frequent complaint from women was that negotiators did not pass on enough information about decision-making that affected them, and that they often did not find out about decisions until after they were made. Interviewees said that women commonly perceived that their message was not being listened to even if they did speak out and felt that no matter how hard women pushed during consultation processes (both within the community and between company and community), in the end, it had not made any difference. Some interviewees observed cases where women's participation in meetings was limited to setting up and catering – sometimes through choice, but also through cultural obligation or lack of invitation to participate more formally.

2.4.2 Tensions between cultural norms and gender equality

One of the key tensions discussed by interviewees was the tension between respecting traditional cultural practices and pushing for practices that embodied equality and human rights.⁶² Interviewees acknowledged that gender relations and cultural change was very difficult for companies because it was not seen as a company's role to challenge culture. Attempts to do so could be perceived as patronising or lacking respect. However, interviewees generally also accepted that mining companies had an ethical responsibility in the modern world to operate responsibly, in accordance with human rights and to mitigate the potential negative impacts of their operations. Interviewees suggested that this meant pushing for gender equality, or at least increased women's involvement and consideration of women's priorities in agreements.

Several interviewees suggested that the 'cultural argument' had been used by some groups to marginalise others and preserve their own power. This needed to be considered carefully by companies rather than accepted at face value. Some interviewees suggested that the 'cultural argument' should not extend so far as to limit women's participation broadly. Instead, there should be only limited cultural responsibility so that men had a responsibility to discuss and decide among themselves but women had the opportunity to discuss and decide for themselves on issues that were their particular responsibility.

Some interviewees emphasised the ability of community groups to adapt their own culture in response to the challenges of mining.⁶³ They paralleled the ability of communities to develop culturally acceptable methods for encouraging women's participation – cultural adaptations or

⁶⁰ On the importance of including women at the negotiation table, Macintyre's (2003, p. 123) research at Lihir in Papua New Guinea demonstrates the negative implications of agreement making processes which lack women's input.

⁶¹ For example, Byford (2002, pp. 30-1) discusses a case at Misima Island where women were not represented at the negotiation table, and the agreement disproportionately benefited men through an unequal distribution of royalties and compensation.

⁶² On the subject of women, human rights and mining, see Macdonald (2006). Ife (2009, p. 834) argues that where human rights are applied uncritically, they can lead to an imposition of a 'western' construction of human rights within communities that do not accept its assumptions. On how human rights have been applied within Indigenous contexts, see Goodale (2009).

⁶³ By contrast, Trigger (2011) suggests that it may not be considered culturally appropriate for some Indigenous Australians to work in the mining industry due to their responsibility to care for 'country'.

‘workarounds’ (i.e. methods that avoided putting individuals in a culturally inappropriate situations) – with some of the issues that indigenous people could encounter if they were employed in mining.⁶⁴

2.4.3 Other prevailing challenges in agreement processes

There was broad agreement among interviewees that women’s inclusion was not a ‘magic ingredient’ that would ensure better agreement processes and outcomes, but rather that women could bring perspectives and ideas to the table that would enhance development outcomes by ensuring that a more thorough range of issues was considered. Full engagement with the range of rights and interests, including those of women with diverse backgrounds, was seen to be the ideal process to underpin agreements. In this vein, several interviewees suggested gender was not the most important consideration in terms of agreement processes and outcomes. Some thought that there was ‘no harm’ in incorporating gender equality principles into negotiations, and that more involvement by women would improve agreement processes and outcomes, but that gender equality alone would not overcome what they considered to be the more critical problems with agreements.

Some factors that were considered to be more critical included:

- *The disadvantage of community groups in the negotiation process with respect to power, expertise, experience, knowledge and ability to take a strategic approach to negotiations*

Several interviewees regarded the fundamental inequality between company and community in the negotiation process as the greatest barrier to successful agreements and agreement outcomes.⁶⁵ Although communities had the power of ownership or custodianship of resource lands, companies were seen to be the more powerful party in negotiations. Reasons included access to financial and technical resources, previous experience negotiating with communities and perceived power.

Conversely, factors that diminished community power were low levels of understanding about rights in negotiation, low levels of internal cohesion, and high levels of socio-economic disadvantage. Additionally, communities were often reliant on mining company funding to undertake community engagement and planning processes. Some interviewees heard frequent complaints from communities that the amount of funding was not sufficient to undertake comprehensive consultation to support participatory processes.

- *Availability of skilled negotiators*

Several interviewees noted that it could be difficult for some communities to find individuals with the necessary skills, knowledge, understanding of community interests and personality to take on the role. Interviewees also suggested that poor selection of negotiators (e.g. elected for popularity rather than skills) could negatively impact the process.

⁶⁴ Parmenter (2011, pp. 74-5) outlines a number of gender-based cultural constraints for Indigenous women working at Century mine in Australia. She explains for example that in the community setting, it may be taboo for one Indigenous person to talk with another for cultural reasons; however within the company these individuals may be required to work together on a team.

⁶⁵ Altman elaborates on this point in his chapter ‘Indigenous Rights, Mining Corporations, and the Australian State’ (2012, pp. 46-74).

- *The difficulty of understanding the mining process and the potential impacts of the mine*

Understanding the potential impacts of mining was described as one of the key challenges for community groups negotiating with mining companies. While there is now a great deal of information about the impacts of mines on communities, interviewees still felt that a lack of access to relevant and understandable information was preventing communities from negotiating agreements that best accounted for their assets and needs. Even where comprehensive studies were undertaken (e.g. as part of the pre-feasibility stage, EISs, SIAs, etc) the outcomes were often thought to ‘sit on the shelf’ rather than inform negotiations.⁶⁶

- *The temptation to rush into negotiating the content of an agreement, rather than focusing on building a robust process and strong relationships*

Many interviewees stressed the importance of viewing an agreement as a process, rather than a document that is signed.⁶⁷ Rushing to get sign-off on an agreement was seen to be one of the key reasons that agreements failed to deliver the expected benefits.⁶⁸ Poor attention to getting the processes right (in terms of communication, engagement, relationship building and governance) was thought to lead to poorly formulated agreements that would struggle in implementation. Rushing agreements risked excluding groups of community stakeholders, which could lead to conflict.

- *An understanding of the importance of getting full and diverse community engagement*

A number of interviewees felt that there were still some companies that did not see the value of genuine and inclusive negotiation with communities, and just aimed to meet the minimum requirements for consultation, without a view to the potential long-term costs.

- *Deficiencies in relation to the rights that communities have under the law*

Some interviewees pointed to deficiencies in legislation that protected community rights and interests with respect to mining projects. They felt the requirements for consultation and negotiation were not sufficient for ensuring positive outcomes from agreements. Insufficient guidance on implementation of legal responsibilities and poor government capacity to enforce legal requirements adversely affected the success of agreements in some jurisdictions.

- *Attention to post-agreement governance and implementation (and consequences for non-compliance)*

There has been much written about poor agreement outcomes being due to a lack of focus on agreement governance and implementation, including issues of capacity building for communities, relationship-building and communication and lack of resources allocated to

⁶⁶ One interviewee noted that, where these studies are funded by mining companies, they are often specifically withheld from communities and treated as confidential documents.

⁶⁷ Gibson & O’Faircheallaigh (2010, p. 120) consider that the process of relationship building between company staff and the local community is fundamental to successful negotiations. Langton and Palmer (2003, pp. 31-2) also emphasise the importance of relationship building in agreement making with Indigenous people in Australia.

⁶⁸ Gerritsen & Macintyre (1991) explain that one of the reasons for the ‘rush’ is financial. Long negotiation periods are seen as a high front-end cost, so there are imperatives from within the company to hasten the process.

supporting implementation.⁶⁹ Interviewees referred to a lot of this work, and noted that while there had been increased focus on strengthening governance and implementation, it was still considered to be insufficient and one of the main challenges facing communities and companies. Further, some interviewees felt that implementation of women-specific initiatives were so far down the priority list that they were even less likely to be implemented than other aspects of agreements.

- *Complexity of agreements, and ambiguities in goals and responsibilities, leading to difficulties in interpretation and enforcement*

Some interviewees attributed poor outcomes from agreements (at least in part) to the difficulties that communities and companies had interpreting the conditions included in the agreement.⁷⁰ Some of these difficulties included lack of clarity about who was responsible for implementation, lack of consequences for failure to implement, poorly defined terms, vague language (such as ‘best efforts’), inability to re-negotiate some issues if implementation was not having the desired effect, changes to agreed timeframes and poor processes for dispute resolution.

- *Lack of access to information about other agreements (or a ‘good practice’ template)*

Some interviewees felt that the confidentiality of agreements put community parties at a significant disadvantage, and was likely to hinder communities’ ability to negotiate based on precedents in other agreements.⁷¹ As one interviewee said, “each community starts from scratch”. This was contrasted with company negotiators, some of whom had negotiated a range of agreements, or were able to access past agreements through their company. Some interviewees felt that a template or framework agreement could help to reduce the gap between company and community.⁷²

2.5 Mining industry’s ability to engage women

Interviewees varied in their opinion of the mining industry’s ability to engage with women as potential beneficiaries of mining operations.⁷³ However, most interviewees suggested that generally the industry had a long way to go. One interviewee suggested that his/her company was just at the beginning of its journey on gender and diversity, and that there were some companies that were much more confident, open, experienced and considered on the issues. Another interviewee felt that his/her company had taken significant steps towards taking gender and inclusion seriously at a

⁶⁹ On implementing agreements between Indigenous peoples and resource developers in Australia and Canada, see for example, Allbrook & Jebb (2004) and Langton & Mazel (2008).

⁷⁰ Altman (2012, p. 68) notes that confusion around the content of agreements is a frequent source of conflict between mining companies and Indigenous communities in Australia.

⁷¹ O’Faircheallaigh (2009) also argues that confidentiality requirements constrain Aboriginal parties to agreements by preventing them from exerting the power to appeal to government decision-makers through the media.

⁷² Agreement frameworks and other relevant information relating to agreements between Indigenous people and others in Australia and overseas have been recorded in the Agreements, Treaties and Negotiated Settlements online database (ATNS 2012). The database was created 2002 to support the aim of promoting best practice in agreements.

⁷³ Interviewees pointed to several examples including the Rio Tinto Gender guide (2009), work undertaken within the Resource Management in Asia-Pacific Program at the Australian National University and several site-specific initiatives, some of which have been mentioned above, as examples of positive engagement.

corporate level, through standards, policy and practical guidance, but that there were still widely divergent levels of practice on the ground.⁷⁴

Interviewees felt that most companies explicitly considered a lack of inclusive engagement, marginalisation of parts of society and lack of broad-based community support as significant business risks.⁷⁵ Interviewees also acknowledged that companies were beginning to recognise the growing evidence that women's representation and involvement in decision-making influenced, and as a result, improved outcomes for communities. Interviewees tended to focus on the corporate responsibility in terms of ensuring a good process for agreement-making and implementation. Interviewees believed the following as factors contributed to good process:

- adequate time for information gathering, community engagement and decision-making processes
- adequate funding for meetings (including travel, local language translation), specialist advisors, information gathering and community planning processes
- a good understanding of the local community's formal and informal decision-making processes
- a focus on inclusion and participation
- in some cases, the development of structured processes that brought different voices into the conversation.

Even though companies may employ a women's representative on their community relations staff, or provide funding for establishing small women's organisations, one interviewee stated that companies had still not fundamentally changed their understanding of women as equal rights holders and that "the community is seen as a community of men". Evidence of this included women's exclusion from business development opportunities, aside from traditionally female domains such as laundry or other camp services.

Some interviewees were unsure about the mining industry's ability to tackle issues of gender, as mining companies were not generally regarded as sensitive. However, a couple of interviewees were unsure that a push toward more inclusive agreement-making would come from government, particularly where institutions are weak. That said, there were several examples of national level policies influencing mining industry practice at the operational level.⁷⁶ National plans for women's involvement in mining in countries such as Australia, Canada and Papua New Guinea had influenced company/operation policies, but their effectiveness varied.⁷⁷ Some interviewees also felt that groups such as land councils in Australia were unlikely to initiate significant change in this area due to capacity constraints.⁷⁸

⁷⁴ For a broad discussion on the limitations of translating global CSR performance standards into CSR practice on the ground, see Gilberthorpe & Banks (2011).

⁷⁵ To the contrary, Kemp (2010) suggests that there are conditions under which empowered women may be perceived to pose significant risk to the company's reputation and risk profile.

⁷⁶ For example, in Papua New Guinea the creation of a national gender policy and plan has led to mining companies appointing a 'women's officer' who is responsible for women's issues both within the company and across impacted communities (Eftimie, n.d.).

⁷⁷ For example, the Japan International Cooperation Agency (JICA) report (2010, p. 9) suggests that the Papua New Guinea National Gender policy and plan was both poorly implemented and has now become outdated.

⁷⁸ See Altman (2012, p. 71).

Interviewees talked about instances of company-community conflict that were related to poor engagement or exclusion of women, and felt that this was driving increased awareness in the industry. However, they said that gender issues were still overlooked in formal company risk assessment and management processes.

2.6 Strategies for increasing women's participation (and associated challenges)

This section describes some of the strategies that interviewees suggested for companies wanting to increase women's participation in agreement processes, and some of the associated challenges. These strategies are:

- participatory processes
- capacity building
- raising the issue, with sensitivity
- appeals to best practice and other drivers for change
- ratification/consent processes
- targets, quotas and programs for women.

2.6.1 Participatory processes

Many interviewees suggested that the structure of a process (e.g. requiring a representative or participatory approach) could enable women's participation in circumstances where they may have otherwise been overlooked.⁷⁹ In this way, women were able to get a 'foot in the door' and begin to influence the process.⁸⁰ Often, effective processes were framed in terms of inclusion, participation or representation, rather than being specifically gender-focused. However, interviewees repeatedly reinforced the point that simply opening the process was not sufficient for ensuring women participated, that their participation was equal or that women were able to influence outcomes.

Some of the suggestions for making processes more participatory and therefore more open to women were:

- *Public meetings that allow for input and feedback*

Meetings (both community only and company-community) are a key element of many agreement processes, and were seen to be one method for encouraging participation, promoting transparency and "building validity" of agreements in communities.

- *Stakeholder mapping to identify potentially excluded groups*

Interviewees suggested that stakeholder mapping was a valuable tool that companies and communities could use to examine factors that influenced participation, and also as a method of analysing whether agreement processes were sufficiently representative.

⁷⁹ Cornwall (2002) elaborates on the importance of participatory process in her chapter on Gender and Participatory Development.

⁸⁰ The World Bank suggest that women's participation in social networks and organisations can serve as pathways for collective action in other spheres, such as exercising political voice in local government (World Bank, 2012, p. 332).

- *Focus on process*

Paying attention to ‘process’ was seen as key to negotiating and implementing a successful agreement. Interviewees discussed several aspects of ‘process’ that could have gendered implications, including methods for disseminating and gathering information, facilitating dialogue and planning, structures for implementation and governance, and monitoring and evaluation.

- *Encouraging ‘best practice’*

Interviewees regarded participatory methods as ‘best practice’, and some had tried to promote these in developing strategies for negotiation and implementation of agreements. Interviewees perceived that communities were more open to negotiations about process when it was couched in terms of the company wanting to adhere to best practice or was required due to legislation or company commitments. Some interviewees referred to government ‘action plans’ or other national priorities regarding gender, and thought that companies should ensure that their approach to gender aligned with these.

- *Access existing women’s organisations and women’s knowledge*

Scheduling meetings with existing women’s groups, or focusing on an area of women’s cultural knowledge during the information gathering stage of negotiations can be useful not only for data gathering, but also as a process that supports women to position themselves as legitimate stakeholders with distinct rights, interests and knowledge. Several interviewees noted that this ‘lead in’ process of making women visible as stakeholders, along with building women’s capacity to contribute to discussions, was often essential to promoting an inclusive process.⁸¹ While this process was important as an awareness raising effort, a focus on women’s organisations could have the effect of marginalising women in that their input into the process would be defined only in terms of these women’s organisations. Men, on the other hand, were included in the process as landholders, members of local government or churches.

2.6.2 Capacity building

Interviewees discussed strategies for increasing the capacity of both company and community, with a specific focus on the issue of women’s capacity to engage with agreement processes. They suggested that capacity building for women, particularly if delivered by other women from community backgrounds who had experience with mining, could help women to participate more effectively. Some interviewees noted that they had seen an increase in the impact of women’s participation over time, as women gained experience participating in community decision-making. Capacity building for men to support women’s participation was also raised by some interviewees.

Some interviewees felt that companies could also benefit from capacity building on a range of issues relevant to gender. These included the business case for diversity and awareness of gender issues in community relations, the use of participatory methods and tools for engaging women, and increasing

⁸¹ Douglas (2002) discusses the importance of women’s organisations as a platform for incorporating women’s perspectives into community governance bodies in Melanesia.

the ability of company personnel to argue the case for paying attention to gender.⁸² Internal conviction on the goal of gender equality was also thought to drive better practice within companies.

Many interviewees were of the opinion that capacity building for negotiators would also be beneficial – whether they were negotiating on behalf of their own community, or as an employed representative.⁸³ Skills in communication, facilitation, strategy development and community engagement were thought to be essential, along with knowledge of the technical and legal aspects of agreements and an understanding of gender. Interviewees suggested that there were opportunities for negotiators to share knowledge and experiences, which would help build their skills. Already, there are some community-based networks for capacity development among lands managers in Canada – many of whom are women.⁸⁴

2.6.3 Raising the issue, with sensitivity

Many interviewees agreed that companies were in a position to at least raise the issue of gender representation and participation in negotiation and consultation, but that this would have to be done carefully. Whether these discussions should focus on equal or equitable representation would depend on the local context. Discussion of women’s particular interests in joint or women-only consultations could be a starting point. In many cases, interviewees acknowledged that communities could find it unacceptable for companies to suggest how they went about their own internal decision-making processes, but it was worth raising the issue.

Several interviewees stressed that simply imposing a gender lens could cause conflict within the community, or between the company and community, particularly if it was seen to be too prescriptive or intended to overpower cultural traditions. Likewise, taking a “stridently feminist approach” was described as unhelpful, although the involvement of individuals who were identified as feminists was thought to contribute to a strong focus on women. Many considered advocating for an inclusive and participatory process, rather than a gender-focused process, would be less threatening.

Some interviewees believed that having elders or other senior people in communities raise the issue of gender, or inclusion more generally, was often influential. Interviewees suggested that there were opportunities for companies to support or empower community members to ask the question about inclusion. Interviewees warned that companies should avoid “forcing” women to participate in culturally inappropriate ways. Similarly, interviewees cautioned against introducing gender in a way that made men feel belittled or marginalised, as this could introduce conflict into the process as well as potentially lead to negative fallout for women. Interviewees noted that support for gender equity from male community members contributed to improving women’s participation and empowerment in agreement processes.

None of the interviewees with experience representing indigenous groups in negotiations had ever had gender put on the table by either company or government. They described a tendency to “defer”

⁸² Kemp *et al.* (2010) explore how discourse used as a strategic resource can facilitate change in gender and corporate social responsibility (CSR) policy and practice in a global mining company.

⁸³ Capacity building for consultants and advisors was not specifically discussed by interviewees, but may also be beneficial.

⁸⁴ For example, the National Aboriginal Lands Managers Association (NALMA), along with its associated regional associations, focuses on professional development, communication and networking across Canada, and recognition of the work of lands managers.

to men's business and male culture, without any interrogation or consideration of why that might be the case. Interviewees who, themselves, had brought up gender inclusion in negotiations had received a variety of responses. In some cases, there was no resistance from communities, and it was accepted as something that should occur. In other cases (typically when men from the community were asked), there was resistance on the grounds that men should be the negotiators according to local custom. In a few instances, interviewees reported that women themselves had declined to participate directly in negotiations, the reasons for which were not always clear.

Sometimes push back or reluctance from communities led to creative approaches to including women. One interviewee shared an example of a case where a company was concerned about dealing only with male leaders and wanted to instigate a process which would expand women's involvement in agreement-making. In this case, the community was not receptive to the idea of public meetings, so the company provided resources for the community to conduct its own strategic planning process, which included consulting widely with the community about its vision for the future. The community received technical advice from the company about how to design an inclusive consultation process, but the company was not involved in the process itself. The process clarified whether the community saw mining as part of its vision for the future, and also increased the capacity of the community to plan, which fed into a wide range of community processes unrelated to mining, including applying for government grants and other funding. Although only in an early stage, the company perceived that this activity had enhanced the company-community relationship and improved company understanding of the community.

Agreements take a variety of forms, and occur at different stages in the lifecycle. Some interviewees did not think that it was appropriate to push the point on gender or consultation issues for very early exploration agreements. Without a strong relationship in place, and where the stakes are relatively low, interviewees felt that there may be a risk to company-community relationships in pushing a group of male elected representatives to expand the group at a premature stage. While inclusive engagement from the outset would be preferable, some interviewees emphasised that the relationship between the company and community was an ongoing process, and there would be a point where it would become more appropriate to push harder for women's inclusion, particularly in cases where it was clear that lack of women's representation was a limiting factor in the negotiation of an agreement.

2.6.4 Appeals to best practice and other drivers for change

Interviewees had different rationales for focusing on gender and other drivers for change in agreement-making processes.⁸⁵ Where companies were pushing for gender equality, interviewees recognised a need for companies to give an explanation for their request to communities. Some interviewees reported that they justified insisting on male and female representation by appealing to company commitments to 'best practice', as well as company responsibilities under various voluntary commitments such as the ICMM Sustainable Development Principles⁸⁶ or the MCA's Enduring Value Framework⁸⁷, or national government policies or commitments to international conventions including

⁸⁵ Rio Tinto (2009) sets out a clear rationale for integrating gender considerations within the extractive industries and highlights key international protocols and standards for gender mainstreaming.

⁸⁶ <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>

⁸⁷ http://www.minerals.org.au/focus/sustainable_development

the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979)⁸⁸ and the Universal Declaration of Human Rights (UDHR 1948).⁸⁹

Explaining company need for broad-based community support based on informed decision-making was also thought to be useful in advocating for inclusive and participatory processes. Interviewees considered the instability of outcomes of agreements negotiated without gender representation to be the main driver of improved practice in this area.

Interviewees perceived other key external drivers to include:

- global attention on the role of companies in communities
- expectations around human rights, particularly in light of the development of the UN "Protect, Respect and Remedy" Framework (commonly called the Ruggie Framework)⁹⁰
- the development of the concept of free, prior, informed consent (FPIC) and the United Nations Declaration on the Rights of Indigenous People (UNDRIP)⁹¹
- government gender policies/positions with which companies are expected to comply.

Internal drivers included:

- acceptance of the business case for integrating gender considerations leading to increased requirements in management standards, systems and methods
- understanding the risk of excluding women from company operations
- pressure to get active support from communities
- focus on long-term relationship building (agreements as a process).

Several interviewees thought that the concepts of 'social licence to operate' and 'consent' were the main drivers of corporate-level attention to engagement with women, more so than the industry's ability to engage with women as key actors in the economic and political context of mining. They felt that, although progress had been made, companies still tended to focus on doing what was needed in order to operate rather than focusing on the long-term development aspirations and expectations of communities.

2.6.5 Consent/ratification process

Several interviewees felt that agreements which included a ratification or consent process (whereby the negotiated agreement was presented back to the community for its approval) provided an opportunity for inclusion of women. While women may not be present at the negotiation table, ratification of an agreement was a step in the process where they had a chance for input. There was, however, disagreement among the interviewees about how much impact this had on the content of an agreement. Where there was a third party involved, such as a native title representative body, there were often protocols for assessing whether the requirement of 'group consent' had been reached, usually in consultation with an anthropologist and then 'validate'" by the organisation's board or executive. Groups such as this had often developed methods and protocols for engagement and consultation with men and women in order to ensure broad-based support, however, there were

⁸⁸ <http://www.un.org/womenwatch/daw/cedaw/>

⁸⁹ <http://www.un.org/en/documents/udhr/>

⁹⁰ <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework>

⁹¹ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

still noted issues for some women in terms of speaking out against male authority, as well as more general concerns about the ability of some community members to fully understand what they were consenting to.

2.6.6 Targets, quotas and programs for women

As a group, interviewees were divided in their opinion on the effectiveness of specific targets and quotas for women's employment, business development or other conditions that may be included in agreements. For example, the Ok Tedi Community Mine Continuation Agreement (CMCA) included provisions for 50 per cent of scholarships to be available to women (and for 50 per cent women on the scholarship selection panel). Work by The World Bank reported that so far less than 50 per cent of applicants had been women.⁹² Some considered targets, with consequences for non-achievement, to be the only way that outcomes for women could be achieved, and that setting targets was an important step, even though the target was not reached. Slow progress towards the target, or failure to achieve the target, could be a measure of the entrenched disadvantage of women, rather than the effectiveness of the policy or program.

Examples of quotas for women's equal participation in agreement governance structures were also offered. For example, The Village Development Fund agreements at MMG's Sepon mine in the Lao PDR required that the governance committees at the village level were 50 per cent women. Similarly, Rio Tinto's Argyle mine in Western Australia required that there was a male and female representative for each Traditional Owner group on the governance committee. Other interviewees suggested that targets specifying women's involvement could be divisive within a community, as well as difficult to implement and manage. Some also suggested that simply measuring the number of women employed, trained or attending a meeting did not capture whether these activities were contributing to empowerment or equality more generally.

3 Conclusion

The findings outlined in this report confirm that a gender perspective offers important insights into agreement processes and their contribution to development and benefit sharing at the local level. While interviewees had diverse opinions, several common factors that influence women's participation in agreement processes were identified, including cultural context, socio-economic factors, social status, historical precedent, and legal and organisational contexts. These factors were explored in phase two of this research.

Interviewees highlighted several challenges that influenced women's participation in agreement processes, including those that relate to representation and tensions between cultural norms and gender equality. Interviewees also suggested that women's participation was determined by broader challenges that assailed mining and agreement processes more generally (beyond gender considerations). These challenges included post-agreement governance and implementation frameworks, political and historical context, power inequities and participation in engagement processes.

⁹² Menzies (2012).

Interviewees suggested a range of strategies for increasing women's participation in agreement processes, including capacity building, raising the issue of gender equality, international best practice and the establishment of targets, quotas and programs for women. Interviewees also discussed the challenges associated with these and other suggestions. By and large, interviewees indicated that there was significant scope for the industry to improve its approach to gender, including in agreement processes.

The following section outlines the implications for phase two of the project.

3.1 Implications for the case study research

The interviews undertaken for phase one of this research illuminated some of the practical dimensions of gender and agreement processes in mining. They also provided important insights into the issues that needed to be engaged in the field, and how they might be approached. There are several key points that research teams took into consideration in preparation for the cases studies:

- The paucity of literature and wide range of opinions on this topic reflects a situation where knowledge gaps run both broad and deep. Research teams focused on gaining genuine insight into specific issues identified in the field, rather than spreading themselves 'too thin'. In this sense, each case study was designed to ensure that the data collected was meaningful, rather than covering the full set of project interests, and recognising that the field visits would rely on agreeing a workable scope with the companies involved.
- Each of the research teams aimed to be cognisant that non-representation of women in formal negotiations did not necessarily equate to non-involvement (and vice versa). Recent published work has served to reinforce this point. The rapid nature of the research methodology limited the research teams' ability to understand – at depth – these processes, but nevertheless, these assumptions were questioned.
- One of the major challenges that interviewees discussed was the interplay and tensions between local cultural norms and universal values of gender equality. Certainly this is a sensitive area, and researchers aimed to be careful when opening up discussions on this topic, particularly given the risk of backlash against women who chose to engage on this topic, in public or private. Nevertheless, it was one of the most important issues to engage in the field and researchers carefully explored this tension.
- Some scholars have critiqued existing mining and agreement literature for focusing only on negotiation, arguing that the implementation and monitoring phases are in critical need of attention. Although all phases were discussed with interviewees, their experience was largely grounded in the former. While it is important to focus on negotiation processes as a backdrop to any agreement, wherever possible, researchers aimed to seek insight into the gendered dynamics of implementation and monitoring, and how these dynamics changed over the course of the project.
- One notable insight from interviewees was an emphasis on women's 'leadership', beyond issues of 'representation' that were typically the focus of literature about mining and

agreements. Researchers inquired about women's leadership roles and responsibilities, including how this impacted their involvement (formal and informal) in agreement processes and benefit sharing.

- There is a significant gap in knowledge about the link between including specific provisions for women's participation or benefit streams in agreements, and improved outcomes for women. Several examples of these inclusions were discussed with interviewees, however data were incomplete. Where these provisions existed in case study agreements, researchers sought to understand how they came to be included, the degree and success of implementation and outcomes.
- Interviews largely considered the capacity of mining companies to improve gender equality in mining and agreement processes. The focus was not on other actors, such as negotiators, NGOs and other parties. Case research explored whether there were others that might also benefit from capacity building to better support gender equality in agreement processes.
- Finally, the factors that interviewees mentioned as influencing women's involvement in agreement processes largely aligned with the literature. This was a good basis upon which to test whether (and how) these same factors also play out in each of the case study sites.

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Minerals Council of Australia – Focus on Sustainable Development

http://www.minerals.org.au/focus/sustainable_development

UN Women Watch - The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

<http://www.un.org/womenwatch/daw/cedaw/>

UN Declaration of Human Rights – Declaration of Human Rights

<http://www.un.org/en/documents/udhr/>

Business and Human Rights Resource Centre – Protect, Respect, Remedy Framework

<http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework>

UN Permanent Forum on Indigenous Issues – Declaration on the Rights of Indigenous Peoples

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Appendix A: Interviewees

Rodger Barnes, Central Land Council/The University of Queensland, Australia

Keith Bergner, Lawson Lundell LLP, Canada

Gillian Brown, formerly AusAID, Australia

John Burton, Australian National University, Australia

Gerardo Castillo, Societas Consultora de Análisis Social, Peru

Kim Doohan, Mintupela Pty Ltd, Australia

Ginger Gibson, University of British Columbia, Canada

Theresa Hollett, Nunatsiavut Government, Canada

Matt Jeschke, Rio Tinto, United States of America

Bill Kruse, Banarra, Australia

Samuel Kutnick, formerly WCCT, Australia

Martha Macintyre, University of Melbourne, Australia

David Martin, Anthropos, Australia

Geraldine McGuire, Sustainable Solutions Consulting Pty Ltd, Australia

Denyse Nadon, Bear Vision Inc., Canada

Simon Nish, Rio Tinto, Australia

Ciaran O’Faircheallaigh, Griffith University, Australia

Mike Rae, NRplan, Canada

Barbara Sharp, Pax Populus, Australia

Laura Soria Torres, Societas Consultora de Análisis Social, Peru

Margaret Tracey, Rio Tinto, Australia

David Trigger, The University of Queensland, Australia