



Ensuring local impact through global collaboration

Mining in Peru - The added value of a multistakeholder approach

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Reader's guide

This 'lessons learned' document covers a mining case under the Dutch Pension Funds Agreement on Responsible Investment.

In this case, Dutch pension funds cooperated with NGOs, trade unions and the Dutch government to strengthen their engagement. This document describes our journey and provides background information and tables indicating the pre-conditions, lessons learned and insights. Links are given at the bottom of each page to make it easy to navigate the document. Readers who would like background information on the Pension Funds Agreement can scroll to the last page.

We hope that by sharing our lessons and insights, we inspire investors, NGOs, trade unions and governments to work together to create added value in supply chains.

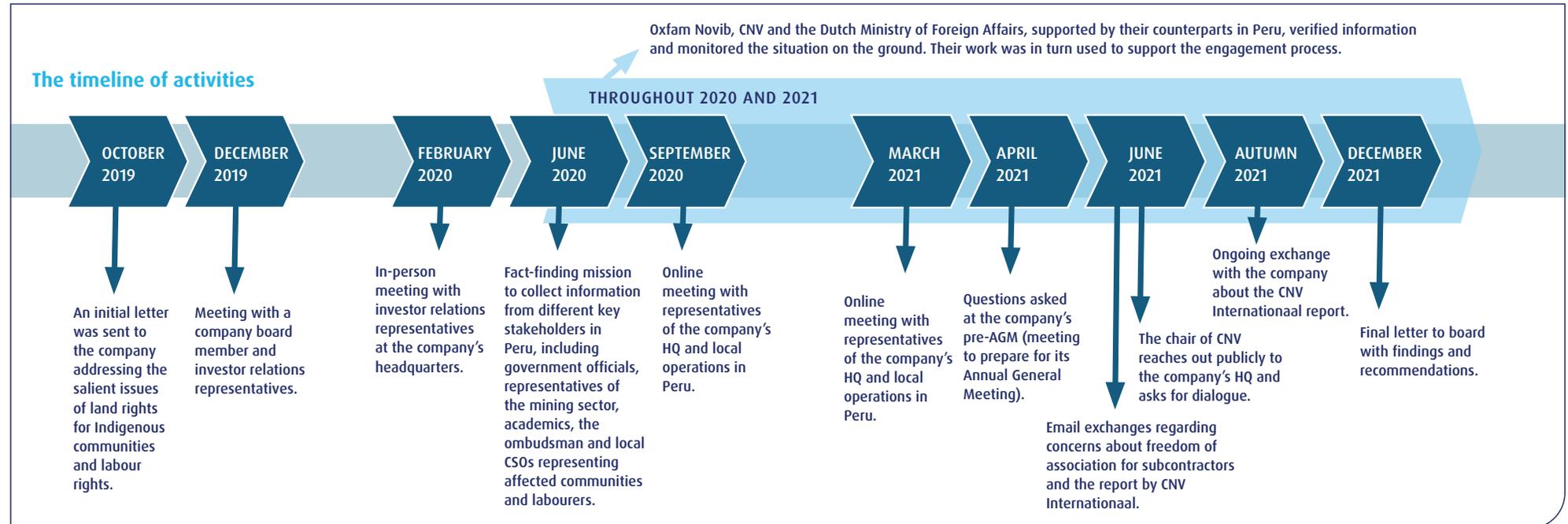
Introduction to the case

The first case under the Dutch Pension Funds Agreement on Responsible Investment concerns engagement¹ with a multinational mining company and its operations in Peru.² Dutch pension funds, Oxfam Novib, CNV and the Dutch Ministry of Foreign Affairs are collaborating in a multistakeholder approach to Responsible Business Conduct (RBC). **The purpose of their collaboration is to address salient human rights issues in the investment chain of pension funds, to learn, to improve engagement and to achieve impact on the ground by combining the various stakeholders' knowledge, expertise and networks.**

The case work started in November 2019, after several months of investigation and after selecting the case in accordance with the [UN Guiding Principles Framework](#). The nature of the multistakeholder approach meant that different perspectives on assessing salience, severity and other concepts in the UNGP Framework needed to be discussed and understood. The stakeholders gained in-depth understanding of one another's perspectives, working methods and motives, enriching their conversations, creating trust, and laying the foundation for future collaboration.

¹ Engagement, or ESG engagement, is a word typically used by investors for dialogue with a company or sector.
² To comply with the confidentiality obligations under the Agreement, the name of the company cannot be disclosed in this paper.

Engagement with the company



“The communities have recognised the value of other allies, from outside the country, who work together to control the company’s practice.”

Local representative in Peru

Key insights derived from this collaboration are:

- 1. Collaboration works.** The collaboration has led to policy commitments and to changes on the ground (see the table on p. 16).
- 2. Collaboration leads to stronger, informed engagement by pension funds.** Collaboration increased knowledge, including an understanding of the local context, and broadened the perspectives of the different stakeholders. It led to multiple information sources, including local information and verification, and an understanding of the key stakeholders’ ways of operating
- 3. It is important for affected communities and labourers to know and feel that they are heard,** and that foreign investors care about their situation and use their leverage to address the salient issues they are suffering from.
- 4. At the beginning of the process, the parties set out clear goals for the case, including the ultimate goal of having an impact on the ground, not knowing whether this could be achieved within the given timeframe. As parties also committed to collaborating on the case for a longer period of time, it forced them to dig deeper and led to changes on the ground.** Through the collaboration, stakeholders worked together on a common agenda. The collaboration reinforced the joint mission, and pension funds deepened their engagement with the respective company based on new information.
- 5. The regional, thematic and sector-specific knowledge of the NGOs and trade union allowed the pension funds to challenge the company about its practices.** Without this particular knowledge, it would have been hard to assess the commitment of the company on its merits (see the table on p. 7).



The gap between policy and practice - an illustration:

The company pursues a global policy of respecting FPIC (Free, Prior and Informed Consent) for Indigenous Peoples. This is also what they demonstrated during the engagement with the pension funds. The company acknowledged the local problems in this area and assured the pension funds that they had been addressed with the respective local company. The local company even issued a public statement on the importance of respecting FPIC. At the same time, local visits revealed that land lease contracts were being distributed contradicting these good intentions, as these contracts were in violation of the envisaged FPIC process. Identifying this gap between policy and practice was a clear outcome of the collaboration, and strengthened engagement between the company and the pension funds.



How we started

How we started

How we selected a company for this case

As described in the Pension Funds Agreement, the case had to address actual and potential adverse impacts on fundamental labour rights and human rights, such as freedom of association, the prohibition forced labour and children's rights. Different parties brought a range of cases with salient human rights issues to the table. The case selection process proceeded in the following steps:

1. We applied the guiding principles of the UNGPs in which selection is based on severity of the issue.
2. We assessed the added value of joint collaboration by looking for cases in which parties would be unable to resolve the relevant issue through their individual leverage alone.
3. We selected a case that could be used as an example and that would be instructive, giving it a broader relevance for the entire pension sector and other delegations.

The process of selecting this particular mining case was time-consuming. The various parties involved had different perspectives, mandates and objectives. By taking the time to explain and understand one another's organisational structure and main interests while also being mindful of capacity, commitment and accountability towards the affected communities and labourers, the group managed to overcome this hurdle.

“We must recognise that many of the actions carried out during the year could not be achieved without international support. Many unions that do not have this support do not achieve what we have achieved. It has been a very important step (and an example, too) to have an organisation that is affiliated with direct and outsourced workers. Without cooperation it would not have been achieved.”

Local trade union representative in Peru

ESG risks in mining

Mining involves serious environmental, social and government (ESG) risks. In this case, we focus on two salient issues related to mining:

1. Pollution of the living environment, forced relocation, pollution of water sources, violence by security guards, and inadequate consultation of the Indigenous communities involved, resulting in the violation of Indigenous Peoples' human right to Free, Prior and Informed Consent before an activity takes place on the land on which their livelihoods depend
2. Hazardous and uncertain working conditions and local conflicts for labourers relating to outsourcing and subcontracting of labour

Working together

After committing to the goals described in the table on p. 7, the parties agreed on their various roles and responsibilities. The pension funds would engage with the company, with engagement being supported by various information sources, including on-the-ground, fact-based research conducted by local partners and counterparts of the NGOs and trade union. Collaboration would be ensured through joint appraisal of research findings, joint drafting of engagement asks and joint discussion of interim engagement outcomes.

Land & community rights: Free, Prior and Informed Consent (FPIC)	Labour rights: Subcontracted workers
The salient issues at stake	
<p>Free, Prior and Informed Consent Free, Prior and Informed Consent is a <u>right</u> for Indigenous communities. Both companies and governments play an important role in protecting the human right to FPIC for Indigenous populations.</p> <p>Violations of this right were observed:</p> <ul style="list-style-type: none"> Indigenous communities living in the impacted mining area were not meaningfully consulted about the expansion for a new pit affecting their lands and livelihoods, nor did they give their consent. In April 2018, the company submitted a MEIA (Modification of the Environmental Impact Assessment) for the existing mine regarding the expansion. This process bypassed adequate procedures that protect Indigenous communities and guarantee their collective rights. On 25 December 2019, the government of Peru accepted the MEIA without consulting the relevant communities. The impact assessments lacked information, however, and there was no resettlement plan, a requirement set by the very same government. 	<p>Labour rights of outsourced workers Outsourcing is common in this sector and region, but the company should protect the labour rights of outsourced workers and uphold Peruvian legislation as well as internationally recognised guidelines on labour rights.</p> <p>Violations of labour rights included:</p> <ol style="list-style-type: none"> freedom of association not being upheld; outsourced workers being paid less for the same work; outsourced workers working under worse conditions and; outsourced workers facing greater occupational health and safety (OHS) risks.

Goals for the engagement with the mining company	
<p>Accomplish FPIC for, social dialogue with and remediation for adverse impacts for the affected communities surrounding a specific mine.</p> <ul style="list-style-type: none"> Issues are on the agenda of the company at HQ and regional level. The company acknowledges that FPIC needs to be respected and achieved before taking action. The company is taking steps to respect FPIC in connection with their activities. 	<p>Improve working conditions and labour rights for subcontracted workers.</p> <ul style="list-style-type: none"> The company recognises the problems that CNV addressed in a study involving subcontracted workers (for example by opening up about the number of subcontracted workers, contracts and working conditions). The company is open to starting a social dialogue in Peru for subcontracted workers (as a gateway to enhancing their labour rights). The first steps have been taken towards initiating a social dialogue that includes subcontracted workers.





Regional approach:

The relevant mining company operates worldwide. By focusing on a specific country, Peru, and assessing local and regional business activities, the working group was able to address and challenge its corporate strategy and actions on the ground. Engaging with the company about both global policies and regional practices paves the way to assessing its due diligence. It would not have been possible to understand regional business activities without the support of local counterparts in Peru.

“A transnational company’s corporate policy (of consultation and consent) is inadequate if it does not verify compliance with the provisions of that policy.”

Local representative in Peru

Pre-conditions

1. It takes time for parties to learn one another’s language, perspectives, working methods, roles and responsibilities and understand differing expectations and mandates. This understanding is fundamental for establishing trust and can be achieved by finding common ground. The commitment made under the Agreement was fundamental to pursuing a common objective and establishing the working group.
2. Even though it is a time-consuming exercise, navigating together through processes such as applying the UNGPs can help the parties understand the various views. This is also true for joint appraisals of information and evidence.
3. Within the collaboration itself, it is important to lay down principles on working procedures, to create focus, to set goals, and to allow space for deviating from the plan, as the process is dynamic and the reality on the ground is constantly shifting.
4. It is advisable to think through and discuss various different scenarios beforehand, including those scenarios in which the company fails to recognise the problem or is not willing to act. Parties must build in moments of reflection and adjust accordingly.
5. Creating a multistakeholder working group takes time, not all stakeholders have the same capacity and financial or other resources might form a limitation. Once a multistakeholder group is up and running, the threshold to reaching consensus on specific issues/cases/impacts in the future is lower.
6. It is important to manage expectations and be upfront about expectations as well as limitations from the very beginning.
7. Shareholder rights also entail shareholder responsibilities. Shareholders are mainly responsible for overseeing whether a company’s policies and processes lead to a well-managed company and for holding the board accountable. Shareholder responsibilities do not include managing actual operations. In the engagement process, it is important to be aware of this shareholder-investee company relationship
8. Collaboration is effective but time-consuming. It is therefore important to use collaboration thoughtfully and in situations in which it is most beneficial.

Join fact finding

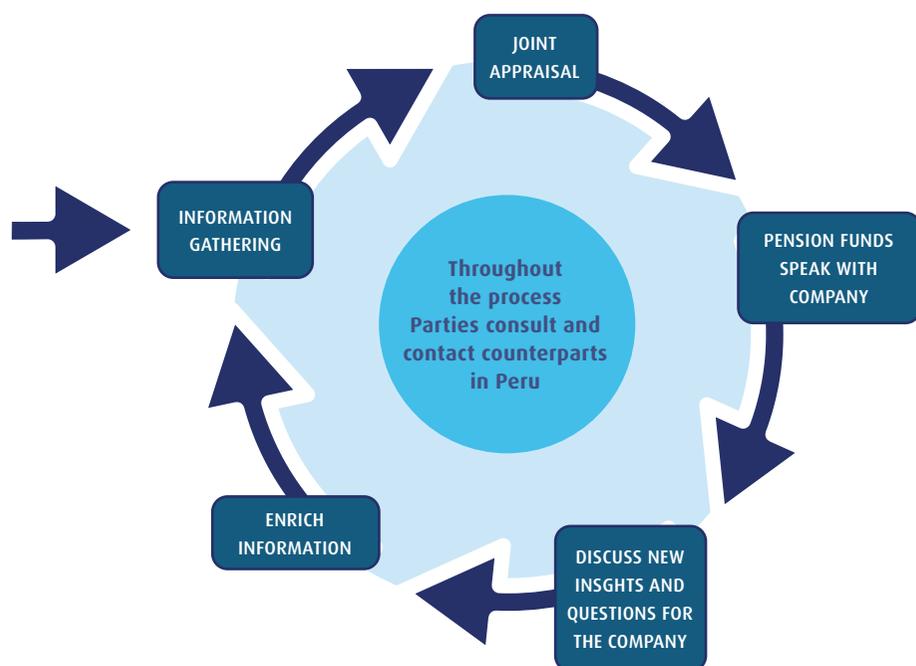


Joint fact-finding

How did we go about this?

Going on a fact-finding mission strengthened the engagement. The mission helped to consolidate the knowledge and insights of the various parties on the case. The group followed a cyclic approach, as illustrated below. Pension funds contributed research from their own sources, such as ESG data providers; Oxfam Novib and CNV contacted their partner organisations in Peru; and the Ministry of Foreign Affairs contacted the Dutch Embassy in Peru.

Process of joint fact-finding throughout the case



Online Field visit

Covid-19 prevented the group from paying a physical visit to Peru. The collaboration therefore organised a virtual visit, which was hosted by the Dutch Embassy in Peru. The 'virtual field visit' took five days and the group had seven online meetings with the following stakeholders in Peru:

- National ministries
- the national ombudsman
- the labour inspectorate
- trade unions
- NGOs, researchers
- the industry organisation.

By speaking to various different stakeholders, experts and authorities, the group was able to form a shared impression of the situation, avoiding the misinterpretation of information or doubts about the validity of some claims. This approach also provided context and therefore deepened the engagement with the company.

Research

During the dialogue, CNV Internationaal submitted a research report conducted by independent researchers on subcontracting at the company's mining sites. This report shows that the use of subcontracting at these sites is higher (70%) than the national average (56%) in the sector. The pay gap between directly contracted employees and temporary workers is substantial at 39%.

Oxfam Novib shared its experiences with Free Prior and Informed Consent (FPIC). The expectation was that the company would engage with local communities before developing a new mining site or expanding existing sites, and that negotiations would be conducted in good faith. Local partner organisations were able to demonstrate that the company does not do this enough at its mining sites.

“We have learned that companies operate in the grey areas of the law with teams of specialists to help them (lawyers, economists, etc.). Companies are working to limit or reduce union actions because there is an implicit thought: there should be no unions; when in fact, freedom of association is a fundamental labour right. So, under that premise, they take actions to reduce them, for example through labour outsourcing.”

Local trade union representative in Peru

Key insights joint fact-finding mission:

Sharing of information:

- The trade unions and NGOs had to have a safe space to share information and time to coordinate and check with local counterparts whether information-sharing could lead to adverse impacts for local human rights defenders or trade union members.
- Getting information is a time-intensive and costly process for trade unions and NGOs because the necessary information is not general in nature but very precise.
- Some of the company information shared with pension funds was confidential, and some information provided by data providers was subject to intellectual property restrictions and agreements with ESG data providers.

We therefore advise:

- creating a safe space where information can be shared
- discussing at the outset which information can be shared and subject to which conditions
- agreeing on confidentiality and use of the information.

Sharing the experience of gathering new information deepens the parties’ understanding of how information is assessed and what information is useful for which goals.

We therefore recommend joint fact-finding missions or joint appraisals of information.



The engagement



The engagement

*“The case follow-up worked.
The greatest evidence can be found in the cessation of the
company’s pressure on communities.”*

NGO representative in Peru

The engagement took place in different phases and with an alternating focus on the two main engagement themes. The pension funds contacted and spoke with the company at several points in time (see the timeline on p. 3). The most interesting element of the collaboration compared with regular engagement processes is that the pension funds could now check the information provided with local stakeholders and feed it back into the conversation with the company. This led to a different dynamic and also different results.

Key insights engagement:

Sharing of information:

- There were several fact-finding meetings with the other parties in the Agreement in between the various engagement activities. The meetings helped to focus the engagement activities and to check and challenge information from the company when necessary.

Creating leverage:

- Working together as investors helped to clarify the asks within the engagement and increase leverage vis-à-vis the company.

Combining tools

- During this engagement, the pension funds combined several responsible investment instruments, ranging from letters and questions asked during the AGM to engagement meetings with the board, investor relations and representatives of local operations. This helped to put the issues on the agenda in different parts of the company.
- Even more innovative, however, was the interplay between NGOs, trade unions, investors and the company. This made it possible to amplify messaging concerning labour conditions, for example, and to get the message across that this topic was a joint concern of multiple shareholders and stakeholders.

Taking sector- and country-specific features into account in the engagement process:

- **By focusing on a specific geography and related issues and impacts**, pension funds can steer the conversation with a company from policy to effective implementation of this policy on the ground.
- **Insight into the local context:**
 - In Peru at least, how a FPIC process is implemented depends on government regulations and involvement. This means that the company has a clear responsibility, but that it is also subject to the way government agencies handle this process. Insight into these regulations is therefore important for successful engagement.



- **Insight into the subjects:** Collaboration can help overcome knowledge constraints that pension funds face.
 - A lack of specific regional insights and knowledge can be overcome partly by taking information from NGOs, embassies and trade unions, but considering the **sensitive nature of FPIC processes**, the aim for investors is to ask companies to uphold FPIC and to be transparent about the process to its stakeholders.
 - It is important to consider how **subcontracting** is implemented in the mining sector, the role of joint ventures, the local regulations and the position of trade unions (including in subcontracting). **Without these insights it is difficult to effectively ask questions and influence a company on this issue.** We have seen instances where a company passed on its responsibility for subcontracted labourers to their suppliers, saying that adding certain conditions to the supplier codes would suffice. However, a company should have a clear concept of its role in subcontracted labour, be accountable and use its leverage with its suppliers (increasing supplier capacity). This is especially true in countries that lack adequate government oversight and regulation. It is also important to be aware that outsourcing may be part of the company's business model, which will make it harder to change. Nevertheless, outsourcing in mining is a root cause of multiple problems around labour violations.
- **Collaboration could help overcome cross-sectoral challenges in engagement and systemic issues.** Solving these issues requires interplay between different actors in the social and economic domain. Trying to understand the interplay between labour rights, labour conditions and community relationships as systemic conditions helps to focus on the right leverage points in conversation with the company. In engagement, focus on the most severe impacts of the business activity. In addition, think of leverage points that can solve part of the systemic puzzle. A theory of change addressed in conversations with NGOs and unions can help identify the pieces of this puzzle and the 'enabling rights.' For instance, if there are poor labour conditions, asking the company to improve labour conditions is of course warranted, but the effect of supporting freedom of association could potentially be more influential in the long-term.





Outcomes and tracking progress

Outcomes and tracking progress

How did we go about it?

From the start, the group followed an iterative process regarding goals and tracking progress and outcomes. We revisited our goals regularly to determine whether progress had been made and to see whether we were on the right track. And while we continued to pursue the key goals, we specified them further at the end of 2020. We tracked progress at different levels: progress made in relation to the situation on the ground, and progress at the policy level (the HQ level). The rationale, or ambition, is that by diving into the specific case in Peru, we could also test and improve the company's policies and practices worldwide. On top of that, we tried to extract lessons from the collaboration itself.

Overview of end goals and achievements

End Goals 2021-Land Rights	Achievements
<ul style="list-style-type: none"> • Issues are on the agenda of company HQ and company locally • Company acknowledges that FPIC needs to be respected • Company is undertaking action to respect FPIC with regard to the expansion of the mine 	<ul style="list-style-type: none"> • Issues are on the agenda of company HQ and company locally • Company acknowledges that FPIC needs to be respected • Company has stated at HQ level that it will respect FPIC in Peru and will act accordingly. Local operations have released a public statement as well. Based on our information, that statement is also being translated into behaviour on the ground, but in the long term, we would need to monitor whether this is the case throughout the FPIC process

End Goals 2021- Subcontracted Workers	Achievements
<ul style="list-style-type: none"> • Company recognises the problems CNV Internationaal has addressed in its report (percentage of subcontracted workers, equal pay for equal work, contract forms and safe working conditions) • Company is open to initiating a social dialogue in Peru that includes subcontracted workers as a gateway to enhancing their labour rights • Ideally, the first steps will be taken to initiate a social dialogue that includes subcontracted workers 	<ul style="list-style-type: none"> • At the company's 2021 AGM, the pension funds were able to bring board-level attention to the subcontracting issues • The company claims to be open to entering into a dialogue with CNV Internationaal regarding its report on subcontracting. This has not happened yet, however, and the company has yet to live up to this commitment • The topic has been on the table at all meetings with the company. The company has slowly shifted its position, from stating that there are no issues regarding subcontracted workers towards more openness about the points raised, as shown in its correspondence with CNV Internationaal. However, although the company has committed to initiating a dialogue with representatives of subcontracted workers, this has not happened yet and its actions on the ground remain worrisome. The company has also not yet committed to entering into dialogue with CNV Internationaal

Key insights outcomes:

It is clear from this case that engagement takes time, especially because:

- the company involved has to move from denial to acknowledgment
- there can be clear differences between HQ and local operations in position (and information available). A longer engagement process is necessary to ensure that information and positions trickle down from HQ level to local operations and vice-versa.
- processes such as FPIC are often multi-year processes and a short engagement is not well suited to monitoring them or to taking action through engagement and achieving impact.

Next steps

The collaboration under the Pension Funds Agreement will formally come to an end at the end of 2021. As regards the land rights and FPIC of local communities, the parties are monitoring the status quo in Peru to continue the conversation with the company when necessary. Regarding subcontracted workers, the company has not yet conceded one of the key asks, i.e. that it should enter into dialogue with local unions and CNV Internationaal about their published findings. The parties involved will therefore remain in (informal) contact about this issue and follow up with the company.

Further next steps, for example how to scale up or expand the lessons learned from this case to other types of engagement, are discussed in the Agreement itself.

Recommendations concerning next steps

For Pension Funds

- **Share information** acquired in this case **with asset managers and engagement providers** with the goal of increasing leverage; this could also be done through existing networks and platforms.
- **Ask asset managers, fiduciary managers, or engagement providers about stakeholder consultation**, for example when and how they establish relationships between NGOs and trade unions to talk about specific cases, to share local information, and to prepare for engagement with companies.
- **Explore how existing information flows could benefit from the information shared by NGOs and unions.** This would include information provided by ESG data providers, the PRI Collaboration Platform or resolutions platform, and newsletters from such parties as the Business and Human Rights Resource Centre.
- **Combine methods in the engagement process.** Use the different instruments available to increase leverage, including asking questions at the AGM and amplifying the asks of NGOs and trade unions (and vice-versa).

For the government

The Ministry of Foreign Affairs can play a role in **influencing multilateral agendas and positioning issues** by:

- **Facilitating multistakeholder dialogue:** this can happen at multiple points in the process. For example, the embassy in Peru played a facilitating role in organising meetings with relevant stakeholders for the online field visit.
- **Using diplomatic networks** in relation to due diligence and engagement, for example **when the embassy in the country where the company has its headquarters has connections at the company.**
- **Utilising stakeholder networks** to influence local policymakers and governments towards mutual engagement goals.

For trade unions and NGOs

Trade unions & NGOs can use knowledge/insights from the financial sector to increase their leverage in supply chains.

- A clear understanding by unions and NGOs of the inner workings of pension funds can help to identify opportunities for increasing leverage.
- Trade unions and NGOs can use investors' insights about the engagement process to better contextualise and assess the value of different sources of information that can be fed back into the engagement process.
- On-the-ground information can help to target other aspects of the value/supply chain, capitalising on the information provided by other parties in the supply chain.
- Investor voting at AGMs can deliver opportunities for trade unions/NGOs to flag specific issues with the company.

By exchanging information with pension funds, trade unions & NGOs can simultaneously increase impact:

- Complementary approaches to a specific company, sector or issue in the supply chain can increase impact.
- Other parties can gain leverage from investor engagement, improving their dialogue on the ground.
- Trade unions can share lessons learned with international union organisations to improve the latter's long-term strategies.

Background information

About the Agreement

The Dutch Pension Funds Agreement on Responsible Investment was signed on 20 December 2018 by 73 pension funds, the Federation of the Dutch Pension Funds, six NGOs, three trade unions and three government ministries. The objective of the Agreement is for the Parties to prevent and tackle the adverse social and environmental impact of investments by pension funds. In the first year and a half, the number of signatory pension funds increased to 83. These funds together account for some 1200 billion euros of invested assets, i.e. 90 percent of the total assets invested by Dutch pension funds.

In this agreement, the signatory pension funds have chosen an approach to identifying, prioritising and addressing risks for society and the environment based on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (UNGPs).

Under the agreement, the funds cooperate with the Dutch government, NGOs and trade unions, which in turn share their knowledge and experience and the knowledge and experience of the parties' local partners. This gives the pension funds a better understanding of where risks may occur – for example human rights violations or environmental damage – and enables them to use their leverage to solve problems and mitigate risks. The ultimate aim is to have a positive impact on the practices of the companies in which they invest.

For more information on the Agreement, please visit the [website](#) (In English)

Collaboration in cases

The agreement has a 'Wide Track' and a 'Deep Track'. The Wide Track concerns all signatories. Its aim is for all the Dutch pension funds to adopt an approach that will speed up implementation of the OECD Guidelines and the UNGPs in their investment policy and practice.

In the Deep Track, the pension funds work with the Dutch government, trade unions and NGOs on specific cases. They select cases on the basis of the selection criteria specified in advance in the Agreement:

- The adverse impact of the case must be severe.
- The joint investigation should provide added value for the case and allow different parties to contribute their specific expertise.
- The case must address actual and potential adverse impacts on fundamental labour rights and human rights, such as freedom of association, forced labour and children's rights.
- Cases must act as examples and be instructive, so that the investigation has a broader relevance for the entire pension sector and other Delegations.

“The value of the international support has been to defend the rights of the mine workers who have never been heard and whose rights have been violated. It also shows that we are not alone and that there are organisations that watch over the workers.”

Local trade union representative in Peru

Working group members

Pension Funds

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Frans van de Veen, *CNV Internationaal*

Oxfam Novib

Imke Greven, *Oxfam Novib*

Amnesty International The Netherlands

Jaap Bartels, *Amnesty (until February 2020)*

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Jeroen Verburg, *Ministry of Foreign Affairs*

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