

How Shūrā aids community participation: The case of mining of natural resources

Abstract

Mining is a human activity that has negatively disturbed the environment and is linked to significant social impacts, inequalities (Carvalho, 2017), economic power and greed (Zorrilla, 2009). The key question that has been posed for decades is *“how can the various stakeholders use their diverse interests and needs to generate mutual benefits for all, while respecting the environment and striving for sustainability”* (Milano, 2018). More recently, the emphasis has shifted from mutual benefit to one of equity instead. Best practice has shown that good engagement and participation, across all stakeholders, builds trust, leads to resolution on disputes, strengthens the local economy and generates sustainable practices (Milano, 2018). With the mining and energy industry moving to more automated processes, not only will communities be negatively impacted by economic participation, but equitable community participation will drop even further as societal license from local communities will become harder to obtain (Carvalho, 2017). In this article, we look at the principles of *Shūrā* (consultation) in Islam and see what lessons we can draw to strengthen the principles of community participation in the consultation process to ensure communities are fairly and equally represented, now and in the future. While the concept of *Al- Shūrā* will be discussed in this paper, in relation to the natural resource sector, they can be applied to many areas requiring consultation such as in the position of ruler or judge, political, civil, military spheres of

administration (Al-Raysuni 2013) and technology, which has been attracting increasing attention to their products, use of social media and the harm caused in society.

1. Introduction

Mining is a human activity that has negatively disturbed the environment and is linked to significant social impacts, inequalities (Carvalho, 2017), economic power and greed (Zorrilla, 2009). Countries that are rich in natural resources pose several possibilities around economical, technological, societal, and environmental opportunities. These possibilities benefit various stakeholders (Government, for-profit Companies, NGO's, Investors, Communities) differently. The key question that has been posed for decades is "*how can the various stakeholders use their diverse interests and needs to generate mutual benefits for all, while respecting the environment and striving for sustainability*" (Milano, 2018). Mining Companies have been criticized for decades, as the primary interest of these organizations is profit (Zorrilla, 2009), and have been pressurised to ensure mutual benefit is achieved, which have led to the establishment and pursuance of initiatives like CSR¹ (Kemp & Owen, 2013). More recently, the emphasis has shifted from mutual benefit to one of equity instead. Best practice has shown that good engagement and participation, across all stakeholders, builds trust, leads to resolution on disputes, strengthens the local economy and generates sustainable practices (Milano, 2018). Therefore, organizations have made community participation, inclusion of stakeholders in decision making and exercising rights core parts of an organizations approach to their consultation process and CSR efforts. But it is not only

¹ Corporate Social Responsibility (CSR) is defined as a self-regulating business model that helps a company be socially accountable—to itself, its stakeholders, and the public. By practicing corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental. (Investopedia)

important to include the various stakeholders and respect their rights, it is an ethical obligation to ensure that these stakeholders are able to represent their interest and needs fairly and elevate these efforts to being part of their “core business” (Kemp & Owen, 2013).

Many activities relating to mining and energy extraction are in indigenous² (first nation, aboriginal) communities, “which account for 6%³ of the world’s population”. These communities are considered “local” and historically had rights to the land and associated resources. A big challenge is the level of awareness, access and ability of these communities and their representatives to participate in an equally informed way with mining organizations to truly represent their rights and interests. While Governments are expected to play a role in ensuring the welfare and well being of indigenous people, Governments interests are not always representative or aligned with the community’s rights and interest. And while there has been tremendous improvement⁴ in this area with respect to local rights and values, these communities still struggle for economic justice⁵ (Carvalho, 2017). A community, or

² Indigenous communities: also known in some regions as First peoples, First Nations, Aboriginal peoples or Native peoples or autochthonous peoples, are ethnic groups who are the original or earliest known inhabitants of an area, in contrast to groups that have settled, occupied or colonized the area more recently.

³ There are approximately 476 million Indigenous Peoples worldwide, in over 90 countries. Although they make up over 6 percent of the global population, they account for about 15 percent of the extreme poor. Indigenous Peoples’ life expectancy is up to 20 years lower than the life expectancy of non-indigenous people worldwide. Much of the land occupied by Indigenous Peoples is under indigenous customary ownership, and yet many governments recognize only a fraction of this land as formally or legally belonging to Indigenous Peoples. Insecure land tenure is a driver of conflict, environmental degradation, and weak economic and social development. This threatens cultural survival and vital knowledge systems – both of which contribute to ecological integrity, biodiversity and environmental health upon which we all depend. (World Bank, <https://www.worldbank.org/en/topic/indigenouspeoples>)

⁴ Over the last 20 years, Indigenous Peoples’ rights have been increasingly recognized through the adoption of international instruments and mechanisms, such as the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) in 2007, the [American Declaration on the Rights of Indigenous Peoples](#) in 2016, [23 ratifications of the Indigenous and Tribal Peoples Convention](#) from 1991, the establishment of the [United Nations Permanent Forum on Indigenous Issues \(UNPFII\)](#), the [Expert Mechanism on the Rights of Indigenous Peoples \(EMRIP\)](#), and the [UN Special Rapporteur on the Rights of Indigenous Peoples \(UNSR\)](#). (World Bank)

⁵ Although indigenous people make up over 6 percent of the global population, they account for about 15 percent of the extreme poor (World Bank, <https://www.worldbank.org/en/topic/indigenouspeoples>)

representatives of a community, can only truly represent their needs and interests based on their knowledge of the project at hand, the ability to assess the trade-off's and benefits and their own understanding of the impact to them and their community. Given the challenges that indigenous communities generally face around historical colonization, their associated education levels⁶ and the lack of "community members who have the experience or knowledge on how to negotiate an effective agreement with a mining company"⁷, the likelihood is that they aren't able to represent themselves fairly and equally during a consultation. With the mining and energy industry moving to more automated processes, not only will communities be negatively impacted by economic participation, but equitable community participation will drop even further as societal license from local communities will become harder to obtain (Carvalho, 2017).

In this article, we look at the principles of *Shūrā* (consultation) in Islam and see what lessons we can draw to strengthen the principles of community participation in the consultation process to ensure communities are fairly and equally represented, now and in the future. While the concept of *Al- Shūrā* will be discussed in this paper, in relation to the natural resource sector, they can be applied to many areas requiring consultation such as in the position of ruler or judge, political, civil, military spheres of administration (Al-Raysuni 2013) and technology, which has been attracting increasing attention to their products, use of social media and the harm caused in society. There has been progress made on establishing the United Nation Principles on

⁶ <https://www.ccsa-nccah.ca/docs/determinants/FS-Education-SDOH-2017-EN.pdf>

⁷ <https://www.ictinc.ca/blog/12-common-mistakes-in-first-nation-consultation>

Human Rights (Ruggie's Principals)⁸ that seek to guide better outcomes in relation to this, across Government and Businesses, but this is not mandated and one still needs to refine and adapt the principles to ensure it is applicable, practical and impactful.

2. *Shūrā* – the Quranic Principle of Consultation

The Qurān describes the characteristics of the believers who have attained the good pleasure of Allah in the following way:

﴿And those who respond to their Lord, and observe prayer, and who (decide) their affairs by mutual consultation, and who spend out of what We have provided them with﴾⁹

Shūrā is a very broad topic and one that is left for scholars or experts to advise on. There are however, differing interpretations amongst scholars and experts based on the Quranic versus and Hadith. Some scholars associate the principles with the western definition of democracy; while others argue that *Shūrā* is more focused on decentralizing power. Even within Islamic States and across Muslims, *Shūrā* principles are not consistently used due to historical and political complexities. Al-Raysuni (2013) believes that *Shūrā* should be adopted to protect interests and as a tool for reconstruction and reform. Sulaiman (1999) believes *Shūrā* constitutes

⁸ United Nations Principles of Human Rights (Ruggie's Principals)
https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf

⁹ Sūrah al-Shurā, verse 38

one of the four cardinal principles in the Islamic perspective on socio-political organization. The other three are justice, equality, and human dignity (Sulaiman, 1999).

Based on the command from Allah in Surah Al Imran (3:159), The Prophet Muhammed (SAW) consistently sought to take counsel from his companions and those that followed him. It was narrated that Abu Hurayrah (The Prophet SAW companion) observed,

“Never have I seen anyone more prone to seeking his Companions’ counsel than the Messenger of God”¹⁰

It was required for the Prophet (SAW) to seek counsel and therefore required, by Islamic law, that leaders seek “counsel in all matters relating to public concern”. Al-Raysuni (2013) advises that this counsel related to matters of public concern should be based on mutual consultation, and that leaders cannot prioritize their concern or act unilaterally. The reference to public concern indicates shared concern, shared rights and therefore a shared nature of the benefits and harm. That is honouring the virtues and views of those that do live and care for the land. This view is not consistently shared across western society and practice within mining of natural resources. Leaders of organizations have prioritized their own interests, and aligned with Governments for mutual benefit, with communities not having standing. While many organizations will argue that it is Governments responsibility to act on behalf of their communities and ensure their best interests are taken into consideration, that is not the case with many real examples proving Government acting in their own interests and not representing

¹⁰ Jami' at-Tirmidhi, Narrated by al-Tirmidhi in one of his sections on jihad

the community and its people. Communities have been excluded and left to feel unrepresented, marginalized, spurring acrimony and opposition (Davenport et al. 2007).

We outline, as highlighted by Sulaiman (1999), 4 key principles of *Shūrā* that can help guide one's consultation approaches in the current scope of this paper:

2.1. Equal decision making through popular consent and collective deliberation

The Quran states that all humans are equal before Allah, differentiated only by piety, and therefore should not have unequal standing in society:

﴿O mankind, indeed, We have created you from male and female, and have made you into nations and tribes, that you may know one another. Indeed, the most honored of you in the sight of Allah is the most righteous. Indeed, Allah is Knowing and Acquainted﴾¹¹

Shūrā is therefore, essentially a decision-making process amongst equals and not an optional consultation process by leaders who exhibits power and privilege, that chooses who they wish to consult with. It is grounded on the right to be involved and equally represent the interests of those in consultation. *Rida al awam* (popular consent) and *ijtihad jama'I* (collective deliberation) are both modes for managing matters relating to public affairs or concern, to enforce this principle. In addition to this, Islam also states *mas'uliyah jama'iyyah* (collective responsibility) is required for maintaining the public good of society. Many studies, focused on community consultation within the mining sector, has emphasised communities experiencing power and

¹¹ Surah Al-Hujurat 49, verse 13

privilege of leaders in not only choosing who they wish to consult with, but also at which point to consult the community and maintain final say over the decision (Walsh et al, 2017). *Shūrā* is not about seeking consultation once the decision is made on what route to pursue, but rather to open up the consultation at a point in time when all possibilities are still on the table (Al-Raysuni 2013). In recent years though, we have seen various initiatives by Governments and Private Sector to try and cater for better and more timeous input from communities such as town halls, open forums, legislation and laws governing the right for first nation/indigenous communities to be consulted on matters, where they were previously left out of. While these initiatives have somewhat improved consultation, they are still a way from achieving equality of status, equity and collective deliberation. Leaders should always remind themselves that the act of seeking out others' counsel is legitimate, praiseworthy, and a means of emulating the Prophet's (SAW) example and therefore the desired course of action (Al-Raysuni 2013).

2.2. Delegated authority in Islam (*Khilafah*)

Shūrā is an integral feature within the institution of *Khilafah* and Islam. *Khilafah* emphasises Allah's delegation of authority to the Ummah (nation) to collectively maintain peace, justice and prosperity on earth. Hazrat Umar bin al-Khattab (RA), the second Khalifa of the Prophet (SAW), went so far as to say:

"There is no *Khilafah* except [that it involves] consultation"¹²

¹² <http://www.al-mawrid.org/index.php/articles/view/the-institution-of-consultation-during-the-reign-of-rightly-guided-caliphs>

Khalifa then refers to the representative chosen to lead the ummah and ensure their needs are met, through consultation. Hazrat Khalifatul Masih II (RA)¹³ explains “The *Khalifa* is bound to take counsel with the representatives of the people when he is to take a decision of vital national importance”. The concept of Khilafah does not favour some over others and therefore concepts like nationalism have no place in Islam and *Shūrā*.

2.3. Electing a leader to represent (*Khalifa*)

Electing a leader (*Khalifa*) is called the principle of *bay'ah* which comprises of two steps namely a nomination process and then acceptance of the nominee. It is recognised as an individual's political right to accept or not. A *Khalifa* is not considered a king or dictator and cannot impose authority through coercion or force. In addition, He is not sovereign and cannot legislate laws independently that benefit some and not others, and instead needs to be just. There is no power or privilege associated with a *Khalifa*'s role and is different to the western view of elected leaders within the public and private sector. As part of consultation, the *Khalifa* is bestowed the authority to make the decision that is best for the ummah (nation), once their views have been heard and considered. The *Khalifa* should not choose, based on preference, who they want to consult with through the process and should be engaging of all deemed relevant and impacted by the decision. While the *Khalifa* will consult with the ummah, the decision might not be democratic but rather representative of what is fair and equal for the ummah as a whole. Obedience, by the ummah, to the *Khalifa* is predicated on obedience to Allah and His Prophet

¹³ Tafsir-e-Kabir

(SAW). This was made explicit by the first Khalifa, Abu Bakr Al Siddique, upon being confirmed, through consensus, as successor to the Prophet (SAW). Abu Bakr Al Siddique said while addressing the community present in the Medina Mosque:

"I have been given authority over you, but I am not the best among you. Obey me so long as I obey God in the administration of your affairs. Where I disobey God, you owe me no obedience."¹⁴

2.4. Right to equal representation

Wakalah is the principle of representation allowing an individual to appoint another to represent them in matters where representation is valid. Despite the efforts of countries to implement laws and legislation that govern the right for communities (and their ummah) to be consulted and represented on matters pertaining to the public, there is still a struggle for communities to fairly and equally represent themselves. Many individuals and representatives do not have the knowledge or expertise to adequately understand or consider the options on the table. There are a variety of reasons for this, with historical disadvantage, power and privilege being at the core. It then becomes the duty of the leaders and privileged parties concerned to ensure the right level of awareness, understanding and access to information is available to ensure equal representation and collective deliberation is achieved (Milano, 2018).

¹⁴ Khan, Z (2016), A New Narrative

3. Conclusion

The impact of mining is huge. Not only does the mining sector generate large revenues and profits, but it also accounts for large job numbers within the full scope of mining activity with significant environmental and social impact too. The mining industry has no shortage of critique on its practices, including community and stakeholder consultation. There have been positive movements over the past few decades to improve this, due to increasing pressure from civil society. More recently, we have seen many organizations employing IBA's (Impact Benefit Agreements) to cater for this imbalance and to ensure mutual benefit and equity is gained by both parties. IBAs are essentially private contracts that are legally binding, project specific, and often not described in existing legislation (Kennett, 1999). IBAs have been reported to be mutually beneficial where companies receive valuable "social license" that allows them to proceed without encumbrances, and Indigenous communities receive financial compensation and have more direct say and benefit in terms of what takes place within their communities. However, many experts have critiqued that ascribing financial value to rights as not fair and that companies are simply buying their social license and therefore doesn't achieve equitable benefit. However, others believe that financial compensation is most beneficial to these communities due to historical disadvantage and their current economic status. Despite these positive movements, we simply have not been able to achieve fair and equitable participation that have resulted in equal societies.

While Private Sector, and mining in particular, might never ascribe fully to principles such as *Shūrā*, due to the very nature, purpose and governance of these organizations, this paper sought

to outline the principle of *Shūrā* with the intention of inspiring better community participation and consultation within the mining sector. There are many benefits to adopting the principles of *Shūrā*, to guide interventions employed for community consultation, such as prevention of high-handedness and tyranny, greed and envy, teaching and practicing humility, giving everyone his or her due, promoting an atmosphere of freedom and initiative, developing the capacity for thinking and planning and promoting goodwill and unity. It is important for organizations to always ensure that the interventions and methods used are undertaken for the right reasons, to ensure equal representation, collective deliberation, mutual and equitable benefit.

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Zaheera Soomar runs an independent management consulting practice. She has more than 17 years of experience leading on business strategy, organizational change, responsible business practice and innovation and large-scale transformation across multiple industries.

Zaheera started out in the Oil & Gas and Mining sector where she spent over 8 years managing investments, divestment, operations and business improvement in both upstream and downstream operations across Africa, Europe, Middle East and North America.

After completing her MBA in 2012 at UCT GSB (South Africa) and ISB (India), she moved into the consulting space, initially with Bain and Company, where for the past 9 years, has worked with various C-Suite and Government Leaders across multiple regions and sectors on their toughest problems. Her main expertise lies in the Oil and Gas, Mining, NGO, Public/Government, Tech & Telecom and Education sectors. During this time, Zaheera has also been partnering with start-up/early stage firms to help them navigate through their initial phases and plan for growth and expansion.

She specialises in overseeing multi-disciplinary and related areas such as People, Operations, Risk, Strategy, Business Development and Finance. Zaheera is currently based in Toronto, Canada with her husband and three kids. She also sits on a few Boards focused on women empowerment, diversity and inclusion, and disaster recovery.

In addition, she is currently pursuing her Doctorate through Haskayne Business School focused on Responsible Business Practice and the Future of Work. She is also doing an elective study on Islamic Governance, under Professor Amin, At University of Brunei.

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