

WRI REPORT



## BREAKING GROUND

### Engaging Communities in Extractive and Infrastructure Projects

KIRK HERBERTSON

ATHENA R. BALLESTEROS

ROBERT GOODLAND

ISABEL MUNILLA





© JUDY PASIMIO

# Breaking Ground

## Engaging Communities in Extractive and Infrastructure Projects

BY

KIRK HERBERTSON

ATHENA R. BALLESTEROS

ROBERT GOODLAND

ISABEL MUNILLA



WORLD  
RESOURCES  
INSTITUTE

---

HYACINTH BILLINGS  
*Publications Director*

KIRK HERBERTSON, ATHENA R. BALLESTEROS, ROBERT GOODLAND, ISABEL MUNILLA  
*Authors*

MAGGIE POWELL  
*Layout*

Each World Resources Institute report represents a timely, scholarly treatment of a subject of public concern. WRI takes responsibility for choosing the study topics and guaranteeing its authors and researchers freedom of inquiry. It also solicits and responds to the guidance of advisory panels and expert reviewers. Unless otherwise stated, however, all the interpretations and findings set forth in WRI publications are those of the authors.

Copyright © 2009 World Resources Institute. All rights reserved.  
ISBN 978-1-56973-703-3

# Table of Contents

ACKNOWLEDGMENTS .....	iv
FOREWORD .....	v
EXECUTIVE SUMMARY .....	1
INTRODUCTION: AN OVERVIEW OF COMMUNITY ENGAGEMENT .....	3
Section I    HOW PROJECT PROONENTS BENEFIT FROM COMMUNITY ENGAGEMENT .....	7
Section II   REVIEW OF COMMUNITY ENGAGEMENT PRACTICES .....	11
Section III   PRINCIPLES FOR EFFECTIVE COMMUNITY ENGAGEMENT .....	15
CONCLUSION AND NEXT STEPS .....	31
SELECTED RESOURCES .....	33
NOTES .....	35
ABOUT THE AUTHORS .....	38
ABOUT WRI .....	38

# Acknowledgments

We would like to express our gratitude to the many generous persons who took the time to read drafts of this publication and share insights during its development. This publication evolved dramatically over the course of a year, including a four-month review process. We are particularly grateful to Emily Chessin and Smita Nakhooda, who provided assistance and expert input at every step of the process. Several of our colleagues at WRI provided valuable comments, including Claudia Adriazola, Manish Bapna, Lalanath de Silva, John Finisdore, Dana Krechowicz, Janet Ranganathan, Jonathan Talbot, Richard Waite, and Jake Werksman. Polly Ghazi provided extremely insightful edits to improve the readability of this publication. Paula Kweskin and Yasue Sakuramoto also provided research support and numerous ideas. In addition, Jennie Hommel, Hyacinth Billings, and Maggie Powell provided assistance during the publication process.

We are very grateful to several experts outside of WRI who took time out of their busy schedules to review various drafts and share ideas and resources based on their own experiences. These include Peter Bosshard, the Office of the Compliance Advisor/Ombudsman of the IFC and MIGA, Eric Cochard, Jeffrey Davidson, Aidan Davy, Foster Deibert, Amy Faust, Ute Hausmann, IFC's Policy and Standards Unit, Veronica Nyhan Jones, Jens Kubusch, Tony La Viña, Shanta Martin, Shawn Miller, Caroline Rees, Keith Slack, Jon Sohn, Dafna Tapiero, Claire White, and others. This publication benefited tremendously from their feedback. Their willingness to share their views and experiences does not necessarily imply an endorsement of this publication.

Finally, WRI greatly appreciates the financial support provided by the Charles Stewart Mott Foundation, the Netherlands Ministry of Foreign Affairs, the Rockefeller Brothers Fund, and the Wallace Global Fund.

# Foreword

Even as much of the world slides toward an economic slump, extractive industries in resource-rich countries are expected to remain an important source of national income and economic growth. But there is often a downside to inherently environmentally and socially disruptive activities, such as mining and petroleum extraction. Particularly in developing countries, strong governance and human rights systems are not yet in place to ensure that such projects do not inadvertently harm the well-being and livelihoods of local communities.

Such impacts not only create risks for poor communities, but also for companies, investors and governments. In a world in which communications are virtually instantaneous and reputation has enormous global value, the institutions building and backing extractive projects simply cannot afford not to engage in meaningful dialogue with those their enterprise affects.

Indeed, many companies and financial institutions have already responded—by joining initiatives that provide standards on best industry practices, or by working to improve their own methods of community engagement. Rio Tinto and DeBeers, for example, have negotiated agreements with communities on how to avoid harm and provide benefits. In so doing, they have gained strong local support for projects, while communities have seized opportunities for development.

But more work needs to be done. Too often, the rhetoric in support of community engagement does not match the practice. These processes can fail, for example, without the willingness and ability of communities to engage. WRI's International Financial Flows and the Environment project works and partners with local organizations, financial institutions, and companies to promote better project decision-making. In 2007, WRI published *Development Without Conflict: The Business Case for Community Consent*, which demonstrated how community engagement can be good for investors' bottom line. In this successor publication, *Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects*, the authors take the analysis a level deeper. They identify several gaps in the application of community engagement standards, and recommend seven key Principles for Effective Community Engagement to address them. Our hope is that project developers and financiers will adopt these principles as best practice guidance in future project design and implementation around the world.

Is meaningful community engagement easy? Of course not. On the contrary, this report reveals the richly complex interface between project proponents and communities. Is it worthwhile? Absolutely and on every measure – from human rights, to ecosystems protection, to the bottom line. As WRI's research in this report illustrates, community engagement can benefit everyone involved, contributing to reduced costs and risks for project proponents while enhancing access to new opportunities for host communities.

JONATHAN LASH  
President  
World Resources Institute





© JIMMY A. DOMINGO

# Executive Summary

Growing demand for energy and natural resources has led many low-income, resource-rich countries to open remote areas to industrial development. Even as a financial crisis engulfed the global economy in 2008 and 2009, projects such as oil pipelines, roads, and mines continued to remain key development priorities.

In many of these countries, however, strong institutions and governance systems are not yet in place to ensure that extractive and infrastructure projects do not adversely affect local communities. As a result, these sectors have generated a history of harmful environmental and social impacts on local communities. These impacts create risks for companies, governments, and financiers.

For several years, companies, governments, and financial institutions have responded to these challenges by signing up to various initiatives that provide standards and guidance to foster better industry practices. Financial institutions, in particular, often require clients in these sectors to meet environmental and social standards, in order to avoid or mitigate risk.

Most project proponents, host governments, and financial institutions recognize that a strong relationship with those affected by a project can improve the identification and management of risks, as well as long-term project viability. But community engagement efforts often fall short because of a failure to understand local political and community dynamics, or a failure to fully engage all local stakeholders affected by a project.

## PURPOSE OF THIS REPORT: ESTABLISHING EFFECTIVE COMMUNITY ENGAGEMENT PRINCIPLES

WRI analyzed existing community engagement standards and guidance, as well as experiences in several high profile projects. Our analysis revealed that key gaps remain in the knowledge base and on-the-ground application of community engagement standards. Despite the abundance of existing reports and manuals that provide guidance on community engagement, much of the publicly available information on how project proponents

## **WRI PRINCIPLES FOR EFFECTIVE COMMUNITY ENGAGEMENT**

- (1) Prepare communities before engaging.**
- (2) Determine what level of engagement is needed.**
- (3) Integrate community engagement into each phase of the project cycle.**
- (4) Include traditionally excluded stakeholders.**
- (5) Gain free, prior and informed consent.**
- (6) Resolve community grievances through dialogue.**
- (7) Promote participatory monitoring by local communities.**

engage communities reveals great difficulty in applying existing guidance effectively.

Based on this analysis, we developed seven Principles for Effective Community Engagement for extractive and infrastructure projects. These principles are intended to serve two key purposes:

- *For companies and governments developing projects:* to provide a framework for identifying solutions to core community engagement challenges.
- *For citizen organizations supporting communities:* to serve as a resource, in order to empower local communities to provide more meaningful input into project design and implementation.

## **NEXT STEPS FOR KEY PLAYERS**

Extractive and infrastructure projects do not exist in a vacuum—they will both affect and be affected by the surrounding communities and environment. Effective community engagement strategies must create win-win situations for the proponent and communities over the life of a project. To address the gaps remaining in the knowledge base and application of community engagement standards, we recommend the following next steps:

**For project proponents and industry associations:** identify and promote best practices. Proponents of extractive and infrastructure projects should prioritize the collection and public dissemination of community engagement best practices, including examples of how community engagement creates value for companies. The

seven principles proposed in this report can serve as a framework around which best practices can be collected.

**For financial institutions:** increase disclosure, promote improved community engagement. Financial institutions can play a critical role in guiding their clients to link community engagement with project risk management, and should send strong signals to their clients that community engagement is a priority. By improving their own public reporting, financial institutions can promote more open sharing and improvement of engagement strategies. For example, the International Finance Corporation (IFC)—the private sector financing arm of the World Bank Group—should begin to routinely disclose how it determines that each of its projects has “broad community support.” Similarly, the Equator Principles financial institutions should disclose the projects where they are applying the IFC Performance Standards.

**For citizen organizations:** advocate for inclusive, accountable, and transparent processes. The ultimate goals of community engagement are tangible outcomes, such as providing benefits and mitigating risks to improve the lives of communities and strengthen a project’s viability. However, these outcomes often depend on the integrity of the process for achieving them. Community engagement that is inclusive, accountable, and transparent is more likely to result in optimal outcomes for both communities and project proponents. Informed by this report, citizen organizations supporting affected communities can more clearly articulate the type of processes in which they would like to engage.

When communities have the opportunity to collaborate with project proponents during the design and implementation of a project, proponents can more effectively identify and mitigate potential impacts, prevent harm, and shape the project to fit local conditions. Communities, in turn, can have a voice in determining how they will benefit from a project and whether a project fits their development priorities. This creates local ownership and support for the project, which is also good for the bottom line.

This report is the first of two reports to be produced by WRI’s Institutions and Governance Program, the second of which will identify examples of best practices for each of the principles identified.



© NON-TIMBER FOREST PRODUCTS, EXCHANGE PROGRAMME FOR SOUTH AND SOUTHEAST ASIA

# Introduction: An Overview of Community Engagement

The concept of engaging communities in major projects that will impact their lives is not new.\* But it is increasingly relevant, especially in the extractive and infrastructure sectors, where projects such as oil pipelines, roads, and mines can significantly affect people and the environment.

The recent growth in extractive and infrastructure investments has led many low-income, resource-rich countries to open remote areas to industrial development.<sup>1</sup> Even with the onset of the global financial crisis in 2008 and 2009, extractive and infrastructure projects continued to come online.<sup>2</sup> Many of the countries hosting these investments, however, do not yet have effective institutions and governance systems in place, and project proponents must often assure risk-averse financiers that their proposed activities are compatible with the surrounding social, environmental, and political conditions.

## Box 1. Definitions

**Project Proponent:** the company, government, or entity responsible for developing and implementing a project. One example is a mining company that explores or exploits a mine. This report focuses primarily on projects where private companies act as proponents, but the recommendations also apply to government agencies developing extractive and infrastructure projects.

**Local Communities:** refers to groups of people living near a project who are potentially impacted by the project. (“Stakeholders,” in contrast, refers to the broader group of people and organizations with an interest in the project.)

**Community Engagement:** a process in which a proponent builds and maintains constructive relationships with local communities impacted over the life of a project. This is part of a broader “stakeholder engagement” strategy, which also encompasses governments, civil society, employees, suppliers, and others with an interest in the project.

\* For examples of current practices, please see “Selected Resources” at the end of this report.

Many project proponents, host governments, and financial institutions recognize that a strong relationship with those affected by a project can improve the identification and management of risks, as well as long-term project viability. To adapt projects to local conditions, many therefore undertake some form of community engagement, generally aimed at preventing harmful impacts, identifying potential community benefits, and restoring any livelihoods threatened by the project. This process allows a project proponent to build and maintain constructive relationships with local communities impacted over the life of a project,<sup>3</sup> and is an important part of a proponent's broader *stakeholder engagement strategy*.

When local communities participate in the design and implementation of a project, they are more likely to understand and support the changes brought about by the project. This in turn reduces risks and costs for the proponent. Thus, for example, it has become commonplace for an oil and gas company to consult potentially impacted communities when designing and routing a proposed pipeline. Similarly, a mining company might work with local communities to identify environmental and social risks of a proposed project and develop a mutually acceptable plan to manage those risks.

## THE ENGAGEMENT GAP

While the concept of community engagement may be familiar, its application is neither widespread nor consistent. As this report illustrates, many national laws and financial institutions' policies require proponents to implement some type of community engagement in extractive and infrastructure projects, but do not necessarily provide guidance on how to do so. Furthermore, communities often do not have a sense of how the engagement process should work, and thus are not able to participate in dialogue with proponents in an informed way.

In most projects, the onus falls on proponents and even individual employees to engage communities. Some proponents rely on ad hoc approaches and informal community engagement, while others develop systematic strategies to engage communities over the life of the project. Informal engagement can be effective, but some proponents have found that political and cultural realities can undermine these efforts. There may be ambiguities in the division of responsibilities between the project proponent, consultants, contractors, the host government, and individual employees. The proponent may attempt to engage government officials or other local leaders but

find that these individuals do not speak on behalf of the entire community. Some members of a community might see the project as an opportunity for development, while others might oppose the project because of its potential environmental and social impacts. Furthermore, without a strategy in place, the proponent might not allot the necessary time and budget to engage communities.

### Box 2. Under Scrutiny: Growing Spotlight on Community Engagement Practices

Civil society and international organizations are placing increased scrutiny on proponents' community engagement practices and financial institutions' community engagement policies.

- In 2007, the UN General Assembly passed the Declaration on the Rights of Indigenous Peoples, which calls for the free, prior and informed consent of indigenous peoples for decisions affecting them.<sup>1</sup>
- In 2008, Oxfam America initiated an international "Right to Know, Right to Decide" campaign calling on extractive companies to respect the right of communities to participate meaningfully in decision-making and to disclose money paid to foreign governments.<sup>2</sup>
- Also in 2008, the Special Representative of the UN Secretary-General on the issue of human rights and business released a report clarifying measures companies should take to respect human rights standards.<sup>3</sup>

#### Notes

1. UN Declaration on the Rights of Indigenous Peoples 2007.
2. Oxfam America, "Right to Know, Right to Decide," [http://www.oxfamamerica.org/whatwedo/campaigns/extractive\\_industries](http://www.oxfamamerica.org/whatwedo/campaigns/extractive_industries).
3. Ruggie, John. 7 April 2008. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. U.N. Doc. A/HRC/8/5 (Human Rights Council).

## THE INFORMATION GAP

A variety of existing reports and manuals provide guidance for project proponents on community engagement.\* Yet while there is an abundance of guidance, there is a lack of success stories of how this guidance translates into good practice on the ground. Currently, much of the publicly available information demonstrating how proponents apply community engagement (and describing what financial institutions and governments consider to be acceptable community engagement) reveals great difficulty in applying existing guidance effectively.

\* Please see Section II for a review of selected resources.

There are numerous examples of community engagement gone wrong or not existing at all. Companies and financial institutions are often hesitant to put forth their projects as examples of good practices because of the increased scrutiny that this attracts.

Based on a review of literature and high profile projects, this report begins to fill the “engagement” and “information” gaps by outlining a series of principles for effective, on-the-ground implementation of community engagement in extractive and infrastructure projects. The purpose of these principles is twofold: (1) to provide a framework for identifying solutions to core community engagement challenges; and (2) to serve as a resource for citizen organizations supporting communities, in order to empower local communities to provide more meaningful input into project design and implementation.

The report contains three sections:

**Section I: How Project Proponents Benefit from Community Engagement** summarizes recent research by WRI, which demonstrates how proponents can benefit from community engagement by reducing and avoiding costs, identifying and managing risks, and enhancing reputation.

**Section II: Review of Community Engagement Practices** analyzes key existing community engagement policies, laws, and guidance, by financial institutions, industry associations and host governments. Several gaps in addressing core challenges are highlighted.

**Section III: Principles for Effective Community Engagement** proposes an implementation framework for effectively addressing core challenges in designing a community engagement strategy for extractive and infrastructure projects.



© JIMMY A. DOMINGO





© JIMMY A. DOMINGO

# How Project Proponents Benefit from Community Engagement

In recent years there has been renewed interest in large-scale extractive and infrastructure projects. Project proponents have an obvious interest in keeping costs low and investing their limited resources effectively, but local communities have an obvious interest in demanding strong environmental and social safeguards. These interests do not have to compete. If designed properly, community engagement can help avoid costs by identifying project risks and establishing ways to resolve communities' concerns throughout the life of the project.<sup>4</sup>

By engaging communities throughout the project, proponents can build relationships and trust that strengthens both their own and communities' capacity to communicate effectively and resolve concerns. Effective dialogue and trust-building also helps communities to take advantage of opportunities arising from the project, such as employment, support for cultural heritage, education, and business training.<sup>5</sup>

## CUTTING COSTS

There are many examples from developing countries that demonstrate how effective community engagement can help project proponents avoid costs, while its absence can be costly both in terms of money and reputation.

Community engagement during development of the Malampaya natural gas project in the Philippines, for example, cost approximately US\$6 million out of an estimated US\$4.5 billion in total project costs. This investment allowed the proponent to avoid anticipated delays that could have cost much more, an estimated US\$50–72 million. In contrast, community opposition to a proposed expansion of the Yanacocha gold mine in Peru, where the proponent invested little in community engagement, cost an estimated US\$1.69 billion in project delays.<sup>6</sup>

## MANAGING RISK

In addition to providing opportunities, community engagement helps proponents and communities to identify, prevent, and mitigate environmental and social impacts that can threaten project viability. Harm to communities can lead to protests that block or delay construction, and can motivate governments to alter licenses, permits, and oversight of projects. In January 2005, for instance, the Machiguenga community in Peru protested the public hearing of the environmental impact assessment for Block 56 of the Camisea II/Peru LNG liquefied natural gas project, which delayed the project for four months and the Inter-American Development Bank's loan disbursement to the project for 18 months.<sup>7</sup> In other projects, local and international civil society campaigns have damaged the reputations of companies and financial institutions involved, affecting share prices and the implementation of similar projects.<sup>8</sup> Community engagement can be an effective way for project proponents to identify and mitigate these risks, and to resolve the problems that do emerge.

WRI's 2007 report, *Development Without Conflict: The Business Case for Community Consent*, presents examples of how community engagement can benefit the bottom line by avoiding costs and reducing risk (see Box 3).

### Box 3. A Better Bottom Line: Project Risks Mitigated by Community Engagement

WRI's 2007 report, *Development Without Conflict: The Business Case for Community Consent*, describes the types of risks that can arise in extractive and infrastructure projects, and which effective community engagement can help to identify, prevent, mitigate, and manage.

**Financing Risk** – Financial institutions and investors may delay their financing, require more conditions, or decide not to participate.

**Construction Risk** – The proponent may not be able to complete the project on time or on budget.

**Operational Risk** – The proponent may not be able to access necessary inputs, produce sufficient output or sell at a sufficient price, which can disrupt operations.

**Reputational Risk** – The project may harm the proponent's or financial institutions' brand identity, which can translate into loss of market value.

**Credit/Corporate Risk** – Delays or interruptions to a project may reduce the proponent's profitability and asset values, decreasing the proponent's stock value, lowering its credit rating, and raising the cost of borrowing.

**Host Government Risk** – The host government may withdraw permits and licenses, commence enforcement actions, impose civil or criminal penalties on the proponent, or tighten requirements.

**Host Country Political Risk** – Political forces in the host country may threaten the project.

### Notes

Herz, Steven, Antonio La Viña & Jonathan Sohn. 2007. *Development Without Consent: The Business Case for Community Consent*. Washington, DC: World Resources Institute. Available at: <http://www.wri.org/iffe>.

## ENHANCING REPUTATION

Governments, civil society groups, and communities increasingly examine project impacts through a human rights lens. Whereas proponents traditionally assess the "environmental and social impacts" of proposed projects, stakeholders often raise concerns over perceived human rights violations.

Even for projects in countries without strong human rights laws, public perceptions that a company violated human rights can damage reputations, provoke shareholder resolutions, and lead to lawsuits, especially for multinational companies operating in both developed and developing countries. Relevant rights include, for example, those to life, food, culture, property, health, and housing.

By publicly recognizing and committing to respect such human rights, project proponents and financial institutions can boost their credibility while minimizing risks. In practice, respecting rights requires proponents to take several measures such as assessing risk, building employee awareness of human rights, and incorporating human rights into management systems.\* Community engagement is an important part of these measures, and can improve the quality of risk assessments, increase understanding of local conditions, and prevent conflict. Several high profile projects have demonstrated the adverse impacts that can result when proponents do not build strong relationships with impacted communities or fully engage communities in the management of risks.

- In Ghana, a gold mine displaced more than 9,000 people, most of whom were small-scale farmers, leading to inflation of local food prices.<sup>9</sup>
- In a gas pipeline project in Peru, a proponent built several campsites for workers, which increased levels of prostitution, disease, and alcoholism in nearby indigenous communities.<sup>10</sup>
- In Bangladesh, paramilitary forces fired shots into a crowd of 50,000 people protesting a large coal project, killing three and wounding hundreds.<sup>11</sup>

\* Many companies are still learning what specific steps are necessary to "respect rights." For a description of some of the challenges that companies face, see ICMM. Oct. 2006. Second Submission to the UN Secretary General's Special Representative on Human Rights and Business: Mining and Human Rights: how the UN SRSG can help spread good practice and tackle critical issues.

The public and shareholders are increasingly less tolerant of such abuses, a view reflected in international institutions and initiatives. In April 2008, John Ruggie, the Special Representative for the UN Human Rights Council on the issue of human rights and transnational corporations, stated that companies had a “responsibility to respect” human rights, especially those in the international bill of human rights and the core conventions of the International Labor Organization.<sup>12</sup> The UN Global Compact, a voluntary initiative

with over 4,000 corporate participants, states that “Businesses should support and respect the protection of internationally proclaimed human rights.”<sup>13</sup>

Pressure is growing for proponents to make their paper commitments to human rights more tangible. Community engagement helps proponents to pursue activities in the field consistent with internationally recognized human rights, and to avoid complicity in a state’s human rights violations.<sup>14</sup>



©JIMMY A. DOMINGO





© JIMMY A. DOMINGO

# Review of Community Engagement Practices

This section analyzes leading approaches to community engagement, including industry initiatives, financial institutions' policies and guidance, and host government laws.

Table 1 highlights common areas and key gaps in the guidance offered to proponents. (It does not evaluate how proponents implement this guidance.) Initiatives are evaluated against the seven Principles for Effective Community Engagement developed by WRI.

## INDUSTRY APPROACHES

Extractive and infrastructure companies increasingly participate in collaborative efforts aimed at managing environmental and social risks.

Three of the most prominent multi-stakeholder efforts include the Kimberley Process, which certifies shipments of rough diamonds as conflict-free; the UN Voluntary Principles on Security and Human Rights, which provides guidance on the appropriate use of public and private security forces;<sup>15</sup> and the Extractive

Industries Transparency Initiative, which promotes greater transparency and accountability in extractive activities.<sup>16</sup>

In parallel, industry associations have also developed policies and guidance for members to promote more meaningful community engagement.

- The International Council on Mining and Metals (ICMM), a CEO-led industry group, requires corporate members to commit to “implement effective and transparent engagement, communication and independently verified reporting arrangements with... stakeholders.” In particular, members must “provide information that is timely, accurate and relevant” and employ “open consultation processes.”<sup>17</sup> ICMM also developed a position statement on “Mining and Indigenous Peoples,” which is binding on its members.<sup>18</sup>
- In 2005, ICMM, the World Bank, and the Energy Sector Social Management Assistance Programme published the *Community Development Toolkit*, covering the assessment, planning, management, and evaluation phases of community development, as

**Table 1. REVIEW OF SELECTED COMMUNITY ENGAGEMENT APPROACHES**

	#1: PREPARE COMMUNITIES BEFORE ENGAGING	#2: DETERMINE WHAT LEVEL OF ENGAGEMENT IS NEEDED	#3: INTEGRATE COMMUNITY ENGAGEMENT INTO EACH PHASE OF THE PROJECT CYCLE	#4: INCLUDE TRADITIONALLY EXCLUDED STAKEHOLDERS	#5: GAIN FREE, PRIOR, AND INFORMED CONSENT	#6: RESOLVE COMMUNITY GRIEVANCES THROUGH DIALOGUE	#7: PROMOTE PARTICIPATORY MONITORING BY LOCAL COMMUNITIES
<b>Industry Initiatives</b>							
ICMM Position Statement on Indigenous Peoples <sup>1</sup>	❖	0	❖	❖ ❖	0	❖	0
ICMM Community Development Toolkit <sup>2</sup>	❖ ❖	❖ ❖	❖ ❖ ❖	❖ ❖	0	❖ ❖ ❖	0
IPIECA Guidance Document on Sustainable Social Investment <sup>3</sup>	❖ ❖	0	❖ ❖	❖	0	❖	❖
<b>Financial Institution Policies and Guidance</b>							
IFC Performance Standards / Equator Principles <sup>4</sup>	0	❖ ❖	❖	❖ ❖ ❖	0	❖	0
IFC Stakeholder Engagement manual <sup>5</sup>	❖ ❖ ❖	❖ ❖	❖ ❖ ❖	❖ ❖	0	❖ ❖	❖ ❖
World Bank Safeguard Policies <sup>6</sup>	0	0	❖	❖ ❖	0	❖	❖
<b>Host Government Laws</b>							
Philippines Mining and Indigenous Peoples laws <sup>7</sup>	0	❖ ❖	0	❖ ❖	❖ ❖ ❖	❖ ❖ ❖	❖ ❖ ❖
<b>SCORECARD METHODOLOGY</b>							
0	= Does not mention the principle.						
❖	= Mentions the principle, but does not provide guidance on how to implement the principle (including tools, methodologies, and timing for implementation.)						
❖ ❖	= Provides guidance for some, but not all, aspects of the principle (as identified in Section III of this report).						
❖ ❖ ❖	= Provides guidance for all aspects of the principle.						

## NOTES

1. **ICMM Position Statement on Indigenous Peoples:** This policy applies only to mining and minerals projects affecting indigenous peoples. ICMM will publish a corresponding good practice guidance on indigenous peoples in 2009. 1: Para. 4 recognizes the importance of company personnel to understand indigenous cultures, values, and aspirations; and for indigenous peoples to understand a company's principles, objectives, operations, and practices. 2: No mention. 3: Para. 3 requires engagement throughout the project cycle, beginning prior to substantive on-the-ground exploration. 4: Provides a framework for projects affecting indigenous peoples, but does not address other vulnerable groups. 5: No mention. 6: Para. 8 requires members to support frameworks for facilitation, mediation, and dispute resolution. 7: No mention.
2. **ICMM Community Development Toolkit:** This document applies only to mining and minerals projects. ICMM will publish an updated Toolkit in 2009. 1: Several tools, such as community maps and institutional analysis, are provided to build proponent capacity and understanding of community dynamics. Discusses participatory planning, but does not link this tool to preparing communities for the engagement process. 2: Discusses how to use a consultation matrix, which distinguishes between partnerships, participation, investigation, and information. No advice is provided on how to choose the proper approach. Negotiation is not mentioned as an option. 3: A chart on pp. 11-12 demonstrates how community development fits into each project phase. 4: Discusses how to address gender issues using a gender daily calendar and a seasonal calendar. Does not discuss how to include other traditionally excluded groups. 5: No mention. 6: Conflict management options are introduced, including grievance mechanisms, arbitration, courts, mediation, and independent advisory panels. Most recommendations involve a dialogue component. 7: No mention.
3. **IPIECA Guidance Document on Sustainable Social Investment:** This document applies only to proponents' social investment programs, and not to community engagement on impacts and compensation. 1: Discusses how to build capacity for local authorities (p. 14) and use local partners to build the proponent's capacity (p. 27). Mentions the need to lay groundwork for community capacity strengthening, but does not provide guidance on how to do this (page 13). 2: The document recommends using participatory approaches, but does not distinguish between different levels of community involvement. 3: Recommends that social investment programs begin at the time of business project design and "well before the arrival of company trucks" (p. 16). The document also recognizes the need to align social investment with the timing of the project cycle (p. 22). A four-phase approach is introduced, but only applies to social investment (p. 32). IPIECA does not appear to provide similar guidance for other forms of community engagement. 4: Recognizes that only paying attention to the "most affected or host communities" can create tension and conflict among stakeholders (p. 13). 5: No mention. 6: Mentions the need for a grievance mechanism for social investment programs (p. 40). 7: No mention.

## NOTES (continued)

4. **IFC Performance Standards:** These policies apply only to IFC investments, but have been adopted as guidance by other financial institutions. 1: No mention. 2: Calls attention to the value of negotiated settlements for involuntary resettlement (Std. 5, para. 3). Requires good faith negotiations with indigenous peoples, but does not specify the issues to be negotiated (Std. 7, para. 13). Does not distinguish between informing and consulting. 3: Mentions how community engagement is an ongoing process, which should begin early in the social and environmental assessment process, and should be carried out on an ongoing basis (Std. 1, para. 21). 4: Requires clients as part of the social and environmental assessment to identify disadvantaged and vulnerable groups, based on race, color, sex, language, religion, and other statuses (Std. 1, para. 12). Standard 7 also focuses on indigenous peoples. 5: No mention, but IFC “client’s community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities...” (Sustainability Policy, para. 20). 6: Calls for use of grievance mechanisms, but does not base the mechanism on dialogue (Std. 1, para. 23). 7: No mention.
5. **IFC Stakeholder Engagement manual:** This manual applies broadly to a wide variety of projects. 1: Recommends that proponents work with local partners (p. 24). Discusses ways to verify stakeholder representatives and leaders (p. 20). Recommends that the design of information disclosure support consultations and that adequate time is provided to review this information (p. 29). Recommends “pre-consulting” with indigenous peoples (p. 48). Does not provide explicit guidance on building capacity of non-indigenous communities before beginning community engagement process. 2: Includes principles for consultations (pp. 34-41). Discusses the IFC concept of “informed participation” (p. 44). Recommends when to use negotiations and partnerships (p. 63). Does not distinguish between “informing” and “consulting.” 3: Includes a detailed analysis of stakeholder engagement, broken down by each project phase. 4: Includes guidance on engaging indigenous peoples (pp. 47-55) and addressing gender issues (pp. 56-61). Recommends collecting data on vulnerable groups (p. 19). Does not provide guidance on how to identify other types of traditionally excluded groups. 5: No mention. 6: Includes a section on grievance management, but does not include dialogue as a key component of this process (p. 69). 7: Provides examples of participatory monitoring, but does not provide guidance on the challenges of establishing a monitoring system (p. 79).
6. **World Bank Operational Policies:** These policies apply to World Bank-financed investment projects. 1: No mention. 2: No mention. 3: Operational Policy (OP) 4.01 on Environmental Assessment mentions that consultations should begin as early as possible, occur at least twice during the environmental assessment for Category A projects and at least once for Category B projects, and should continue throughout the project (para. 14). OP 4.10 on indigenous peoples requires engagement “at each stage of project preparation and implementation” (para. 10(c)). 4: OP 4.10 focuses on indigenous peoples, and does mention special consideration for vulnerable groups such as indigenous women and youth. OP 4.12 on involuntary resettlement requires that particular attention be paid to vulnerable groups (para. 8). Operational policies do not otherwise address traditionally excluded stakeholders. 5: No mention, but the World Bank requires borrowers to undertake “free, prior and informed consultation [that] results in broad community support.” OP 4.10, para. 1. 6: OP 4.12 on involuntary resettlement mentions the need for appropriate grievance mechanisms (para. 13a). 7: OP 4.12 requires that communities have opportunities to participate in monitoring of resettlement (para. 13a), but otherwise participatory monitoring is not overtly promoted in projects that do not foresee involuntary resettlement.
7. **Philippines Mining and Indigenous Peoples laws:** This review focuses on the language of the law, rather than whether it has been fully implemented. Relevant laws include Revised Implementing Rules and Regulations of Republic Act No. 7942 Otherwise Known as the “Philippine Mining Act of 1995” (Mining law); and the Philippines Indigenous Peoples Rights Act of 1997, Republic Act No. 8371 (Indigenous peoples law). 1. No mention. 2. Both the Mining and Indigenous peoples laws require FPIC in certain circumstances. 3. No mention. 4. The Indigenous peoples law creates rights and protections for indigenous peoples, but the law does not otherwise protect traditionally excluded stakeholders during project development. 5. Both the Mining law (para. 16) and the Indigenous peoples law (paras. 58 and 59) require FPIC. 6. The Mining law establishes regional investigation and assessment teams (para. 198-199) to assess damage claims, as well as a panel of arbitrators to resolve complaints (para. 201). 7. The Mining law requires a Multiparty Monitoring Team, which includes representatives of affected communities (para. 185).

well as stakeholder relationships.<sup>19</sup> In 2009, ICMM is publishing an updated Toolkit, as well as good practice guidance on indigenous peoples and grievance mechanisms.

- **The International Petroleum Industry Environmental Conservation Association (IPIECA),** which represents the upstream and downstream oil and gas industry on key global environmental and social issues, has published several community engagement toolkits including *Guide to Successful, Sustainable Social Investment for the Oil & Gas Industry* (2008), *Guide to Operating in Areas of Conflict for the Oil & Gas Industry* (2008), and *Human Rights and Ethics in the Oil and Gas Industry* (2008).<sup>20</sup>

## FINANCIAL INSTITUTION APPROACHES

- **The International Finance Corporation (IFC),** the private sector financing arm of the World Bank Group, has led the way in setting community engagement standards for international project financiers in emerging markets. In 2006, the IFC adopted a set of Performance Standards that have become the most widely-accepted framework for managing environmental and social risks in emerging markets.<sup>21</sup> The Standards apply directly to IFC clients, but several export credit agencies and Equator Principle financial institutions (discussed below) also voluntarily incorporate the standards into their operations.
- In 2007, the IFC also published *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, designed as guidance for IFC clients and other companies formulating community engagement strategies.

- The **Equator Principles** are voluntary guidelines that require compliance with the IFC Performance Standards. More than sixty of the world's largest private financial institutions, as well as a few export credit agencies, apply the Principles to their project finance activities in emerging markets. Member institutions are advised to apply the Equator Principles to all project finance transactions that exceed US\$10 million and to their advisory activities. In 2007, 71 percent of all project finance debt in emerging markets was subject to the Equator Principles.<sup>22</sup>
- The **World Bank**,\* the public financing arm of the World Bank Group, requires community engagement throughout the project process in all higher risk Category A and B government projects which it finances.\*\* In particular, the Bank requires borrowers to engage communities as part of its indigenous peoples, environmental assessment, and involuntary resettlement policies.<sup>23</sup>

## HOST GOVERNMENTS' APPROACHES

Local laws on community engagement vary widely. Some countries have robust community engagement laws and effective enforcement. Others have strong laws on paper but ineffective enforcement, and others have not incorporated community engagement into laws. Laws relevant to the design and implementation of a proponent's community engagement strategy include:<sup>24</sup>

- Environmental impact assessment, social acceptability, and environmental protection laws.
- Strategic environmental assessments of sectors or regions.
- Property laws, eminent domain procedures, and land titling, including whether the government recognizes community property rights.
- Laws protecting indigenous communities, including those that require free, prior and informed consent for projects.

- Laws requiring that proponents share project revenues with local governments and impacted communities.
- Labor laws and whistleblower protection, which may apply if the proponent hires members of local communities.
- Laws managing protected areas for conservation, which may provide for community-based management of natural resources.
- Freedom of information laws, which may allow public access to certain project documents.
- Foreign investment laws, which may affect whether national laws are binding on a multinational company.

Host governments often act as project proponent or play an active role in a corporate proponent's community engagement activities. In this capacity, government officials can serve as an important source of local information, may lead consultations during environmental and social impact assessments, and provide licenses and permits. Often, proponents will rely on local government officials to facilitate communication with communities.

However, corporate proponents that rely on government officials as the sole representatives of communities can face risks. Some officials may not have the capacity to understand and communicate the project's impacts. Others may be susceptible to bribery, corruption, and conflicts of interest. Others may not speak on behalf of the interests of minority groups and other stakeholders. By seeking direct access to traditional leaders, various interest groups, and others potentially impacted by the project, proponents can reduce these risks.

\* "World Bank" refers to the International Bank for Reconstruction and Development and the International Development Association, the public sector financing arms of the World Bank Group.

\*\* The World Bank Group, Equator Principles, and other financial institutions categorize projects according to the extent of potential environmental and social impacts. While the exact standards vary, Category A projects tend to present the highest risks of significant adverse impacts, Category B projects have less risks of adverse impacts than Category A projects, and Category C projects have minimal or no environmental risk.



© JIMMY A. DOMINGO

# Principles for Effective Community Engagement

Based on a review of literature and high profile extractive and infrastructure projects,\* this section presents seven principles developed by WRI to address common challenges that arise during community engagement. These principles can serve as a framework for proponents, financial institutions, and industry associations to assess whether their existing policies and toolkits are effectively promoting best practices in community engagement, and to move toward effective implementation of community engagement measures. Citizen organizations that support communities impacted by extractive and infrastructure projects can also use these principles as a way to better understand the complexities of the community engagement process and interact with proponents in an informed manner.

## PRINCIPLE 1: PREPARE COMMUNITIES BEFORE ENGAGING

### The Challenge

During project design, the proponent may ask communities to take decisions that will affect their future, but communities may not understand the full implications of the project until after construction begins. Some members of the community may see a proposed project as an opportunity to gain community development benefits, while others may oppose the project because of potential environmental and social impacts. The proponent may recognize the importance of respecting local decision-making structures, such as councils of elders, but these structures may contradict international standards promoting inclusion of women and minority groups.

\* Selected resources are listed in the Annex to this report. WRI also examined over 40 high profile projects. Analysis of selected projects is available on our website at: <http://www.wri.org/iffe>.

## Benefits

Before beginning formal engagement on substantive issues such as management of impacts, compensation amounts, and benefit programs, project proponents increasingly prepare communities and their own employees for the process. Preparation can take significant time, but can also prevent unexpected delays and problems later in the project cycle. By preparing communities for engagement, proponents can improve the efficiency of the process, and will likely receive more informed input from communities.

## Approaches

**Providing Access to Information.** Although a community will likely have its own decision-making structure, community decision-makers may not have experience in weighing the costs and benefits of a project, and may require time to prepare before the formal engagement process begins. Proponents or host governments can support community preparations through:

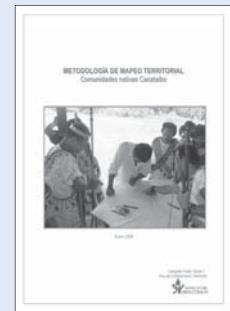
- **Training of community representatives** on processes involved in community engagement, environmental and social impact assessment, and project development.
- **Site visits** by community representatives to similar projects.
- **Participatory mapping** to understand how groups within a community may have different interests in a project (see Box 4).
- **Access to legal and technical advisors** to guide communities through the process, and who are independent from the project proponent.



©JIMMY A. DOMINGO

### Box 4. Case Study: Using Participatory Mapping to Identify Community Resource Use

Participatory mapping is an important method for understanding how communities depend on land and natural resources. The NGO *Instituto del Bien Común* (IBC), for example, maps indigenous communities' land use in the Peruvian Amazon. Members of communities, representing different ages, gender, and social groups, indicate on a map how they use the surrounding land, for what purpose, and at what times of year. Communities might rely on surrounding lands for hunting and fishing, agriculture, medicine gathering, burial grounds, and other cultural or religious activities. In many cases, IBC's work has revealed that different segments of communities depend heavily on land in different ways. Participatory mapping can help proponents and communities to identify risks and interests in the project.



#### Notes

Instituto del Bien Común. 2008. Metodología de Mapeo Territorial: Comunidades Nativas Cacataibo. Peru: Instituto del Bien Común.

Likewise, project proponents and governments may lack the specialized skills and local knowledge to effectively engage communities throughout the life of a project. Employees and government officials involved in project development may benefit from cultural training, so that decision-makers do not rely on inaccurate assumptions about a community. Working with local partners, such as civil society groups, also allows companies to better understand complex community dynamics; bridge technical, political, and cultural gaps; and identify opportunities for informed engagement.<sup>25</sup>

**Identifying Decision-makers.** Communities often have multiple leaders, such as local politicians, civil servants, and traditional and religious leaders. If a project proponent or government selects only one or two of these leaders to engage, there is a risk of isolating other leaders and their constituents. Likewise, if a proponent or a community leader delegates new powers to someone who did not previously possess power, there is a risk of changing political dynamics within the community. To address these risks, proponents might:<sup>26</sup>

- **Talk to multiple persons in a community** when identifying leaders and local decision-making structures.
- **Conduct participatory mapping** to identify different interests within the community (see Box 4).
- **Encourage community leaders to discuss issues with constituents** before taking decisions affecting project design and community benefits.

## PRINCIPLE 2: DETERMINE WHAT LEVEL OF ENGAGEMENT IS NEEDED

### The Challenge

There are many ways that a proponent can engage communities (see Box 5). Many proponents choose techniques according to local conditions and legal obligations. Often, however, there is hesitation to relinquish control over aspects of project design, or a perception that consultations or negotiations are too costly or time-consuming. As a result, some project proponents have chosen only to “inform” local communities of decisions already taken—through briefings and information campaigns—rather than involve communities in the actual decision-making process.

This short-sighted approach reduces community buy-in and can lead to problems down the road which can be costly in both financial and reputational terms. The most forward-looking companies have moved beyond informing, to consultation and then negotiation with, local communities and their representatives.

### Benefits

Choosing the appropriate level of engagement can lead to more effective decision-making and meaningful community input at the critical points in the project cycle. While one-way communication with communities can be cheaper and faster in the short term, proponents can benefit from two-way communication in several ways, such as:

- Improved community support for the project as a whole.
- Improved identification and management of environmental and social risks to local communities.
- Targeted benefits and social development programs that closely match communities’ aspirations.

### Approaches

By determining which community engagement strategies are most appropriate at each point in the project cycle, the process is more likely to reach an outcome that satisfies both the proponent and communities.

**Inform.** Many extractive and infrastructure projects have potentially significant impacts on local communities. While providing access to information is necessary and important, simply informing communities without engaging in dialogue is rarely an appropriate strategy. In many cases, proponents choose to inform communities after a decision has already been taken. A common example is when a proponent tells a community that construction will begin near the community on a certain date, without seeking input on how to minimize the impacts of these activities.

Even if the project has a low physical or environmental footprint on a surrounding community—for example, if the project does not build new roads, explore for new natural resources, or involve construction of new facilities—there is still a need to prepare for unanticipated impacts. Communities might also perceive any project benefits received without engagement to be inappropriate.

### Box 5. Spectrum of Community Engagement Approaches

Proponents have used a wide range of community engagement strategies, which vary in the degree that proponents and communities share decision-making power, as well as in the outcomes of the process. A proponent might use one or more of these strategies:

#### Notes

Information in this diagram is drawn from Mehta, Lyla & Maria Stankovitch. 2000. Operationalisation of Free Prior Informed Consent. Brighton, UK: Instit. of Development Studies, prepared for World Commission on Dams., at Figure 2 (referencing Guy LeMoigne et al., eds., A guide to the formulation of the water resources strategy, World Bank 1994). LeMoigne suggested that the levels of participation range from “knowing about decisions” to “forming/agreeing to decisions.” Corresponding techniques range from “public information” to “joint decision-making” and “conciliation/mediation.” See also, Parker, A. Rani et al., 2008. Managing Risk and Maintaining License to Operate: Participatory Planning and Monitoring in the Extractive Industries. Washington, DC: The World Bank Group; Kvam, Reidar. 2008. Rights and Participation: Citizen Involvement in Projects Supported by the World Bank. Washington, DC: World Bank, Latin America and Caribbean Region. Kvam suggested that the levels of community engagement include information dissemination, consultation, participation, and empowerment.

PROCESS	→	OUTCOME
NEGOTIATE	Two Way: Joint decision-making on issues that impact a community.	Negotiated agreement and/or free, prior and informed consent.
CONSULT	Two Way: Proponent seeks input before a decision is taken.	Proponent records input and demonstrates to community how input is incorporated into decision.
INFORM	One Way: Proponent informs community after decision is taken.	Improved community understanding of the project.

As a result, informing communities without providing opportunities for community input into project decision-making is often not a useful risk management strategy. One exception is at the onset of the process, when a proponent first decides to pursue a project and needs to inform stakeholders of upcoming community engagement opportunities.

**Consult.** Consultations provide communities with an opportunity to engage in two-way dialogue and provide input before decisions are taken. There are three key distinctions between informing and consulting communities:

■ **Provide access to information *before* engagement.**

In consultations, information disclosure occurs before each community engagement activity in the local language and in a culturally appropriate manner. Communities have time to digest and discuss the information. Projected proponents not only provide information about project benefits, but also about potential harm, as well as the proponent's implementation of its commitments to local communities. Proponents can improve the quality of information by taking into account community literacy, complexity of the project, and communities' prior experiences with development projects. Site visits by community representatives to similar projects can also be valuable.

■ **Engage communities *before* taking decisions.** In consultations, proponents engage communities before taking any decision that might affect them, including location of the project, identification of the scope of the environmental and social impact assessment, management of potential impacts, and selection of community benefits.

■ **Respond to community input.** Community engagement is an iterative process, and requires a significant time commitment from local communities throughout the project cycle. As a result, it is important that proponents demonstrate to communities that the process is worthwhile by responding to concerns. In consultations, proponents record community input, and publicly demonstrate how the input influenced project decision-making or improved project design.<sup>27</sup>

**Negotiate.** Increasingly, proponents take a step beyond consulting by negotiating with communities during the prefeasibility and feasibility phases. According to the IFC's *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*: "While consultation tends to be more open-ended, with the intent of exchanging views and information, negotiation intends

#### Box 6. Benefits of Negotiation for Project Proponents

- A stronger social license to operate than if communities must react to non-negotiable benefit packages.
- Less opposition to the project and the changes that it brings to local communities.
- Improved identification and mitigation of the environmental and social risks most important to local communities.
- Streamlined financing and licensing processes, because financial institutions and the host government have strong evidence of broad community support.<sup>1</sup>
- A more predictable and interactive community engagement process, which helps prevent "consultation fatigue"<sup>2</sup> among communities that might tire of participating in ad hoc consultations.

#### Notes

1. International Finance Corporation (IFC). 2007. *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*. Washington, DC: IFC.
2. Consultation fatigue occurs when proponents conduct numerous consultations but do not demonstrate how participants' input has affected project decision-making and design. Consultations can also be expensive for participants in terms of transportation, food and lodging, lost income, and the risks of abandoning fields or livestock. As a result, participants might be hesitant to join subsequent consultations. Sensitivity to these constraints is necessary when designing a community engagement strategy.

to reach agreement on a specific issue or set of issues."<sup>28</sup> Some proponents and local communities negotiate a single, comprehensive agreement that addresses all key issues, including the identification of environmental and social impacts,<sup>29</sup> the proponent's commitments to mitigate those impacts, and additional community benefits such as employment with the project. Other proponents and local communities negotiate specific issues of key interest, such as land purchases or resettlement plans. Depending on the issue, negotiations take place with individuals or entire communities. The latter approach can lead to "free, prior and informed consent" (discussed in Principle 5).

The IFC recommends that proponents negotiate with local communities when: (1) seeking rights to land and other resources; and (2) when stakeholder concerns present a significant risk to project operations or company reputation.<sup>30</sup> In such circumstances, some communities and project proponents prefer to first agree on a "negotiation protocol" to establish the rules of the process.<sup>31</sup>

## PRINCIPLE 3: INTEGRATE COMMUNITY ENGAGEMENT INTO EACH PHASE OF THE PROJECT CYCLE

### The Challenge

Harmful environmental and social impacts, as well as community opposition, can arise at any time during the project. Proponents often find that conducting one or two public hearings during project design, all that may be required by host government laws, is not adequate to build and maintain strong relationships with local communities.

### Benefits

By engaging communities during each phase of the project cycle—prefeasibility, feasibility, construction, operation, and decommissioning<sup>32</sup>—proponents can create stronger relationships with communities. This helps proponents and communities to better prepare and respond to changes that occur over the life of the project, and avoid confrontation and costly delays.

### Approaches

A project typically begins with the **prefeasibility phase**. In the extractive and infrastructure sectors, activities during this phase might include identification of project opportunities, exploration for minerals or petroleum resources, and expansion or rehabilitation of existing projects.<sup>33</sup> Before exploration begins, governments usually require proponents to obtain a permit or concession. In many cases, the government determines which energy and extractive sectors it will promote during a development planning process. Many governments do not require proponents to engage local communities during this phase. Nevertheless, fundamental details about the project, such as site selection, are often decided at this time. Exploration activities in particular can impact communities, and may require a separate community engagement strategy. By building a constructive relationship with communities from the onset, proponents can prevent costly delays, expensive re-design, and harmful impacts later in the cycle.<sup>34</sup>

During the **feasibility phase**, proponents plan the project. They typically identify and mitigate potential environmental and social impacts by conducting an “environmental and social impact assessment,” which leads to an “environmental and social management plan.”<sup>35</sup>

■ **Environmental and social impact assessment:** A process to identify environmental and social risks of a project, weigh alternative options, and develop an environmental and social management plan to prevent or mitigate risks.

### Box 7. Opportunities for Community Input During Project Design

#### Managing Environmental and Social Impacts

- Environmental and social impact assessment
- Design of the environmental and social management plan
- Acquisition of land and rights to access land
- Design of emergency response and prevention plans
- Design of protocols for respecting local cultural heritage, sacred sites, and biodiversity
- Design of influx management strategy

#### Providing Benefits and Compensation to Communities

- Determination of compensation for resettlement and loss of assets
- Employment of local community members
- Determination of financial and equity benefits to be provided to local communities
- Design of social, economic, and development programs to be provided to local communities

#### Monitoring and Implementation of Commitments

- Creation of a participatory monitoring mechanism
- Design of a project-level grievance mechanism

#### Notes

Information in this table is drawn in part from Sosa, Irene & Karyn Keenan. 2001. *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada*. Ontario, Canada: Canadian Envtl. Law Association; Martin, Shanta. 2007. Free, prior and informed consent: The role of mining companies. Victoria, Australia: Oxfam Australia; and Mehta, Lyla & Maria Stankovitch. 2000. Operationalisation of Free Prior Informed Consent. Brighton, UK: Instit. of Development Studies.

■ **Environmental and social management plan** (also called action plan): The outcome of the impact assessment process, which sets forth the plan for managing the environmental and social risks of the project.

The impact assessment can be a valuable decision-making tool that helps ensure the project only moves forward if it is compatible with local conditions. By involving local communities in the impact assessment process and other aspects of project design, the proponent can gather information necessary to identify, prevent, and mitigate risks.

During the **construction phase**,<sup>\*</sup> unanticipated issues may arise, regardless of the quality of previous community engagement, as local communities begin to experience rapid changes to their lives. These impacts can lead

\* In this report, this phase includes construction of infrastructure and facilities, but also preparatory activities such as land purchase, resettlement, and clearing of forests. In some projects, certain activities such as land acquisition and resettlement might begin during the prefeasibility or feasibility phase, or continue into the operation phase.

to community opposition, unless the proponent has developed ways to resolve problems through dialogue with local communities. Because construction generally proceeds along a tight deadline, it is important for the proponent to establish a strong relationship with local communities before this phase begins, in order to prevent delays. Additionally, the proponent should maintain strong oversight over contractors to ensure their compliance with the proponent's community engagement commitments.

During the **operation phase**, local communities may not experience the same pace of change as during the construction phase, but problems may still occur. The proponent is responsible for taking measures to prevent pollution and accidents in accordance with the environmental and social management plans developed during the earlier phases. A monitoring system can help proponents to implement ongoing commitments to local communities.

During the **decommissioning phase**, as the project comes to an end, local communities may face loss of employment, an end to community services that were provided by the project, and health risks from improper disposal of materials. Although proponents often anticipate and mitigate these issues during project design, stakeholders will inevitably change during the years the project is in operation. Complete reliance on old decommissioning plans may not suffice, and community engagement may be necessary to update the plan.

#### Box 8. A Potential Minefield: Managing the Legacies of Former Project Proponents<sup>1</sup>

Project proponents frequently change over the life of a project. In extractive industries in particular, a junior company often conducts exploration and then sells the project to a larger company. Increasingly, courts hold proponents responsible for the legacies of projects they control. In 2008, for example, a Ghana court ruled that mining company AngloGold Ashanti (AGA) must pay over US\$900,000 to communities evicted by the Iduapriem mine, even though the eviction of communities took place before AGA was the owner.<sup>2</sup>

Local communities may not know the difference between various owners, or between a contractor and the proponent. As a result, new proponents may enter existing projects already facing the distrust of local communities. The proponent may be able to rebuild community trust in the project by addressing these legacy issues.

#### Notes

1. Communication with Ute Hausmann, FoodFirst Informations- und Aktions-Netzwerk (FIAN), 16 Sept. 2008.
2. Jerry Mehsah-Pah. *Demolished Ghanaian Village Wins Court Decision*. 11 Jan. 2008. Washington, DC: Oxfam America.

## PRINCIPLE 4: INCLUDE TRADITIONALLY EXCLUDED STAKEHOLDERS

### The Challenge

Extractive and infrastructure projects can influence the balance of political power in a community. Local political elites may also attempt to exert influence on the project's design. Often groups excluded from a project's community engagement are those traditionally marginalized within existing community, local, and national politics such as women, ethnic, and nomadic groups.

Even when a proponent complies fully with host government laws, projects can still have adverse impacts on local communities, especially traditionally marginalized groups. For example, the International Council on Mining and Metals has a Position Statement on Indigenous Peoples (discussed in Section II), which recognizes that "In some cases, mining opportunities—even though abiding by relevant national laws—have contributed to the erosion of Indigenous Peoples' culture, to restricted access to some parts of their territory, to environmental and health concerns, and to adverse impacts on traditional livelihoods."<sup>36</sup>

Community engagement is an effective risk management strategy only to the extent that it can identify and address the concerns of different interest groups. Proponents may face pressure to consult only the local political elite, but this risks creating opposition from impacted groups who have no voice in the process. During the recent construction of a hydropower project in Himachal Pradesh, India, for example, a community alleged that the proponent provided information only to certain community members, spread rumors about those who opposed the project, and fueled divisions within the community.<sup>37</sup>

### Benefits

Conversely, a proponent has the opportunity to provide benefits to marginalized groups—such as jobs, education, and support for cultural heritage—to which they otherwise do not have access.<sup>38</sup> Doing so can provide reputational benefits while helping communities adjust to the project.

### Approaches

Many proponents take efforts to identify and engage all stakeholders, and ideally also ask local contractors and government officials to do so. When planning a community engagement strategy, proponents have used several tools to identify traditionally excluded stakeholders.

**Identifying marginalized groups within a community.** To pursue best practice, when identifying impacted communities at the onset of a project, proponents should engage in a social assessment process that identifies gender, age, ethnicity, and other social groupings within each community. Each group identified may have different interests in the project. To promote more inclusive engagement with marginalized groups, project proponents can:<sup>39</sup>

- **Assess local institutions and political dynamics** in each potentially impacted community to identify groups that do not have a strong voice in political decisions.
- **Use participatory mapping** to identify how different groups rely differently on community resources.
- **Conduct separate meetings** with different groups to create a setting where marginalized persons are comfortable speaking about the project.
- **Disaggregate environmental and social data** to a level that reflects the status of different interest groups, so that the proponent can measure impacts across different groups.

**Identifying stakeholders outside the immediate vicinity of a project.** Some companies only engage local communities living within the immediate vicinity of a project. While this can be an efficient way to identify stakeholders, it can also exclude key stakeholders and the cumulative impacts of having multiple projects within a single area. Opposition to a project often



arises from communities living downstream of a project located upstream, and from communities that lose access to markets or common resources such as fisheries, pastures, and forests.<sup>40</sup> An “ecosystem services review” allows proponents to identify how stakeholders both in the immediate vicinity of a project and further afield depend on ecosystems that may be impacted (see Box 9). Participatory mapping is another useful tool that allows the proponent to better understand how communities’ culture, health, and livelihoods depend on land, including land that might be outside the marked boundaries of a village.

#### Box 9. Identifying How Stakeholders Depend on Ecosystem Services

WRI's report, *Ecosystem Services: A Guide for Decision Makers* (2008) provides a framework that can be used to assess how local communities rely on ecosystem services and how these services might be impacted by a project. Ecosystem services are the benefits that people obtain from ecological systems. The report discusses four categories of ecosystem services:



- Provisioning services – the goods or products obtained from ecosystems, such as crops and agriculture, wild food, freshwater, genetic resources, and timber.
- Regulating services – the benefits obtained from an ecosystem’s control of natural processes, such as air quality regulation, climate, erosion regulation, water purification, and protection from diseases and natural hazards.

- Cultural services – the nonmaterial benefits people obtain from ecosystems such as spiritual and religious values and recreation.
- Supporting services – the underlying processes necessary for production of other ecosystem services, such as nutrient and water cycling.

When examining potential project impacts, the report recommends that decision-makers consider the following questions for each ecosystem service present: Who is dependent on the ecosystem service for their well-being and/or livelihoods? Are there any cost-effective substitutes for the service if it is degraded? Is the project’s impact a large share of the total local or regional impact? Is the ecosystem service in short supply relative to demand? Could the project’s impact push the ecosystem service across a biological threshold that leads to scarcity of the service?

#### Notes

Ranganathan et al 2008. *Ecosystem Services: A Guide for Decision Makers*. Washington, DC: WRI.

## PRINCIPLE 5: GAIN FREE, PRIOR, AND INFORMED CONSENT

### The Challenge

Many indigenous communities have lived on the same land for hundreds or even thousands of years, and rely on that land for their livelihoods and self-identity. According to the UN Declaration on the Rights of Indigenous Peoples, these communities therefore “have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”<sup>41</sup> Increasingly, there is recognition that projects potentially impacting indigenous peoples cannot go forward without their free, prior and informed consent (“FPIC” or “consent”), and that project proponents should strive for FPIC-like processes with non-indigenous, vulnerable communities.

### Benefits

In extractive and infrastructure projects, it is risky for a proponent to *assume* that community engagement has automatically led to support for a project. Rather, if local communities have opportunities to *demonstrate* their acceptance of a project, they are more likely to weigh the costs and benefits of the project, and to engage with the proponent in an informed way. Applying FPIC can have enormous reputational benefits, as it is the standard for enabling and ensuring full participation by communities in a project’s design and implementation.

### Box 10. The UN Declaration on the Rights of Indigenous Peoples

In September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, which is a comprehensive, non-binding statement on the human rights of indigenous peoples, including individual and collective rights, cultural rights and identity, and the right to free, prior and informed consent. Indigenous communities and civil society organizations increasingly call on nations and international organizations, such as the World Bank Group, to ensure that their activities, laws, and policies are consistent with the rights enumerated in the Declaration.

### Notes

UN Permanent Forum on Indigenous Issues, “United Nations Declaration on the Rights of Indigenous Peoples.” Available at: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>.

### Approaches

Free, prior, and informed consent is a collective expression of support for a proposed project by potentially affected communities reached through an independent and self-determined decision-making process undertaken with sufficient time, and in accordance with their cultural traditions, customs and practices. Such consent does not necessarily require support from every individual. The FPIC principle implies that, whatever the form of consent, it must be free of coercion; obtained prior to the commencement of project activities; and informed through access to all the information necessary to make the decision, including knowledge of legal rights and the implications of the project.<sup>42</sup>

Typically, international and domestic law only applies FPIC to indigenous peoples. For example, in the Philippines, the Mining Act of 1995 and the Indigenous Peoples Act of 1997 require FPIC of indigenous peoples and local governments for certain projects.<sup>43</sup> Several international human rights declarations, jurisprudence, and conventions—such as the UN Declaration on the Rights of Indigenous Peoples (see Box 10) and ILO Convention No. 169—apply the FPIC principle to all development activities affecting indigenous peoples.<sup>44</sup> However, proponents can also apply FPIC-like processes as a way to respect the collective and customary rights of non-indigenous, vulnerable communities.

By encouraging ongoing negotiation and collaboration, FPIC can help ensure that the proponent’s decisions are consistent with internationally-recognized human rights norms.

While some proponents follow the FPIC principle, others apply a watered-down version known as “free, prior and informed consultation.” In 2004, an independent



©LRC-KSK / FRIENDS OF THE EARTH PHILIPPINES

review of the World Bank's extractive industries portfolio recommended that the Bank incorporate the FPIC principle into its policies. However, the Bank's Board of Directors expressed concern on the grounds that it might give individuals a veto power over projects that are otherwise in the broader public interest (in fact, FPIC is based on collective, rather than individual, decision-making). As a compromise, the World Bank Group created a two-part standard of "free, prior and informed consultation" with affected communities, leading to "broad community support."<sup>45</sup> This two-part standard was adopted into the World Bank's Indigenous Peoples policy in 2005 and the IFC's Policy on Social & Environmental Sustainability in 2006. Private financial institutions subsequently incorporated the first part of the standard, "free, prior and informed consultation," into the Equator Principles, and others have adopted this strategy.

Applying the stronger FPIC approach ensures that indigenous and local communities have the opportunity to collaborate and negotiate with the proponent, in order to mitigate impacts and determine appropriate compensation and benefits before project design is finalized. The outcome of a negotiation is that the community decides whether to provide its consent for the way that the project is designed.

#### **When to seek free, prior and informed consent?**

FPIC is especially appropriate when a project proponent wants a community to relinquish a collective legal right. Examples include: the right to self-determination (under international law, indigenous peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development); the right to community property, including customary land ownership; and the right to preserve their cultural way of life.

Applying FPIC can often be a challenge, such as when a community includes a mix of both indigenous and non-indigenous people, when several groups of stakeholders have overlapping rights to the same land and natural resources, or when a host government explicitly decides not to recognize FPIC or indigenous peoples' rights. Debate continues on how companies can apply FPIC in these circumstances.

**Engaging communities during project design.** If proponents closely involve communities during project design, while building trust and demonstrating responsiveness to community concerns, communities are more likely to give their consent. Depending on the particular issues and local context, this engagement might take the form of iterative consultations or negotiations (see Principle 2).

#### **Box 11. Key Contents of Impact Benefit Agreements**

**Management of Impacts**, as described in the environmental and social management plan, through a matrix, budget, and timeline of the proponent's mitigation obligations.

**Benefits and Compensation** that the community will receive, including financial mechanisms for distributing revenue to the community.

**Community Consent** for the proponent to conduct specific activities for a certain period of time.

**Participatory Monitoring** of proponent's commitments.

**Grievance Mechanism** to resolve community concerns with day-to-day project impacts.

**Dispute Resolution** clauses to resolve disputes over interpretation of the agreement through arbitration.

**Flexibility Mechanisms** to review and revise the agreement as project conditions change over time, including a process for seeking community consent for any subsequent expansions or modifications to the project.

The key to an effective FPIC negotiation is to ensure that adequate time is set aside for communities to deliberate using their traditional decision-making processes.

Providing adequate time for these deliberations can be a serious challenge for proponents, because projects must often move forward at a fast pace to remain competitive. However, FPIC deliberations occur at a predictable time in the project cycle, whereas adverse impacts at a later point in the process can lead to delays or lawsuits that can last for years and occur at unexpected times.

**Obtaining free, prior and informed consent at the end of the feasibility phase.** At the end of the feasibility phase, FPIC might take the form of a negotiated agreement, legalized contract, memorandum of understanding, or some other expression of community support for the project in exchange for certain benefits, compensation, and mitigation commitments. Some proponents also seek FPIC at key decision-making points throughout project design.

One of the most effective ways to obtain FPIC during the feasibility phase is by negotiating an *impact benefit agreement*.<sup>\*</sup> An impact benefit agreement is negotiated between the project proponent and local communities to determine how the proponent will mitigate environmental and social impacts, and what benefits or compensation the proponent will provide to local communities. In Canada, New Zealand, and Australia, project proponents often negotiate such contracts with indigenous communities.<sup>46</sup>

\* Variations include "integrated benefit agreements" and "impact compensation contracts."

### **Box 12. Case Study – Community Consent, Business Benefits**

In the early 1990s, Hamersley Iron Pty Limited, a subsidiary of Rio Tinto, planned to develop an iron ore mine and railway at Yandicoogina in the Pilbara region of Australia. Several aboriginal groups lived in the region near the proposed mine. In 1994, Hamersley conducted initial consultations with community elders to ensure that the railroad that would connect the mine to the seaport had minimal impact on Aboriginal communities. In 1995, the company decided to negotiate a Land Use Agreement with communities near the site, which coincided with the project's environmental and social assessment process.<sup>1</sup> To gain a better understanding of the key stakeholders and their concerns with the project, Hamersley spent four months conducting a social mapping exercise. Based on this information, Hamersley negotiations were held with local communities from January to June 1996. The stakeholders appointed an independent mediator, and three aboriginal groups decided to work together. They appointed an independent legal advisor, funded by Hamersley, and established the Gumala Aboriginal Corporation, which conducted negotiations on behalf of the communities and had the legal capacity to bind its members. By June 1996, the parties had agreed to a Negotiation Protocol and a method for reporting back to the communities on the status of negotiations—including having the elders of the Aboriginal groups observe the negotiations.<sup>2</sup>

In November 1996, Hamersley and the Gumala Aboriginal Corporation agreed to a Memorandum of Understanding. The Corporation then obtained the consent of the Aboriginal parties it had represented by: (1) discussing the Memorandum at a large community meeting; and (2) meeting with each individual to explain the terms of the agreement and obtain that individual's consent. The result was the Yandicoogina Land Use Agreement, which provided the basis for a long-term collaborative framework between Hamersley and the Aboriginal parties.<sup>3</sup> Hamersley, in turn, reduced permitting time, completed construction under budget by US\$100 million, and commenced production six months early.<sup>4</sup>

#### **Notes**

1. Hamersley conducted this process alongside the environmental and social assessment process (a “consultative environmental review” under West Australia law), which was also completed in 1996. The terms of the Land Use Agreement remain confidential, so it is unclear how the environmental and social assessment was incorporated into the final document. See West Australia Environmental Protection Authority. Apr. 1996. Report and recommendations of the Environmental Protection Authority, Yandicoogina iron ore mine and railway: Hamersley Iron Pty. Ltd.
2. Eggleston, Peter. 2002. Gaining Aboriginal Community Support For a New Mine Development and Making a Contribution to Sustainable Development. Edinburgh, Scotland, Energy & Resources Law 2002 Conference.; Agreements, Treaties and Negotiated Settlements Project, “Yandicoogina Regional Land Use Agreement,” <http://www.atns.net.au>.
3. Eggleston 2002.
4. Eggleston 2002.

These contracts establish formal relationships between local communities and project proponents, provide measures to mitigate project impacts, and provide economic and social benefits for communities.<sup>47</sup> In 2005, for instance, De Beers Canada Inc. signed a contract with the Attawapiskat First Nation before beginning construction of a diamond mine in Ontario, Canada. The agreement addressed issues such as training and education, employment, environmental management, and financial compensation. De Beers and Attawapiskat representatives negotiated the agreement, which was then ratified in a community vote that received 85 percent approval.<sup>48</sup>

Consensus or unanimous support of every community member is not necessary to obtain FPIC. Many communities are not homogenous, and subgroups of these communities may have diverse interests in the project. While individual community members may not all agree on the outcome, they may be able to agree on the community's chosen process for reaching that outcome.<sup>49</sup>

**Adjusting the project according to the outcome.** After deliberating, the community will decide whether to grant its consent for the project. If granted, the proponent might encourage the community to document both its consent and its method for reaching the decision. This helps to demonstrate to the host government, financial institutions, and other stakeholders that the proponent obtained FPIC for the project. Even after the proponent obtains FPIC, community engagement should continue throughout the project, to ensure ongoing support as conditions and community dynamics change.

If the community withholds its consent, this does preclude the project from moving forward. The proponent might analyze the reasons why the community opposes the project, and propose renewed negotiations offering higher compensation or greater avoidance of impacts. The proponent might also adjust the project design or relocate to a new site, so that the project does not impact the community.

In some cases, governments choose to exercise eminent domain to acquire a community's land, despite local opposition to the project. Debate continues about the relationship between FPIC and eminent domain: some governments and proponents argue that eminent domain can take place at any time, so long as communities receive adequate compensation; others argue that eminent domain should not take place until after FPIC is attempted in good faith; and others argue that eminent domain is not appropriate to use with indigenous peoples.<sup>50</sup> In any case, project proponents are often better off avoiding any sites where the use of eminent domain has been controversial.

## PRINCIPLE 6: RESOLVE COMMUNITY GRIEVANCES THROUGH DIALOGUE

### The Challenge

Grievances can arise at any stage of the project cycle, and it is not possible to anticipate or resolve all of these problems during initial planning and design. In mining projects, for instance, the impacts of acid mine drainage are not typically felt until decades after mining begins. Furthermore, seemingly minor grievances can be a part of broader systemic problems, and grievances that remain unaddressed can escalate into larger conflicts. Even small projects can change the power dynamics within local communities, which can create tensions and subsequent risks for the project.

### Benefits

Proponents increasingly establish a project-level grievance mechanism as soon as stakeholder identification begins, in order to provide ongoing mitigation of these risks. This mechanism does not replace communities' access to courts, but can be a cheaper and faster way to resolve grievances. By providing a procedure for communities to raise grievances and resolve them through dialogue with the proponent, the proponent can ensure that minor impacts do not create larger risks for the project.

### Approaches

Companies have long used grievance mechanisms to address problems that arise through the course of their operations, including those raised by employees. For several years, the IFC and World Bank have advised clients to establish such mechanisms so that local communities can raise grievances, in order to mitigate the environmental and social risks of high impact projects. In 2006 the IFC and the Equator Principles financial institutions formally incorporated project-level grievance mechanisms into their policies.

**What is a grievance mechanism.** Grievance mechanisms are a systematic method for recording, negotiating, and resolving disputes between project proponents and local communities.\* From the proponent's perspective,

these mechanisms help manage ongoing project risks and discourage conflicts from going to court. From the community's perspective, they offer a low-cost way to resolve disputes before they grow into larger problems.

A successful grievance mechanism will have procedures that are clear enough for a proponent's staff and local communities to understand, while ensuring that the procedures are sufficiently robust to support the resolution of heated and potentially complex disputes. The design varies, but grievance mechanisms normally include three basic elements.

- First, local communities have an easy, low-cost way to raise grievances, such as through a designated office, company-community liaison officer, local NGO, telephone hotline, anonymous drop-box, or independent ombudsman.<sup>51</sup>
- Second, the grievance mechanism brings together communities and company decision-makers in dialogue, rather than either side attempting to resolve the issue unilaterally.
- Third, the proponent records all grievances and tracks all outcomes of the process.

**When to establish a grievance mechanism.** Many project proponents have preferred to rely on ad hoc, informal conversations with community members to mitigate environmental and social risks that arise during the life of the project. Building personal relationships can be an effective risk mitigation strategy. Project proponents might hire a "community liaison officer" (CLO), for example, to visit communities regularly, develop relationships with community members, and serve as a familiar face who can help resolve grievances.<sup>52</sup> CLOs generally serve as the company's point-of-contact in local communities, answering questions and informing people about the project.

In many cases, this may be an adequate system of resolving disputes. However, Box 14 describes situations where a formal grievance mechanism is likely to be more beneficial.

**Ensuring successful dialogue.** The key to successful grievance mechanisms is to create opportunities for dialogue between company decision-makers and local communities. Experts have noted that many grievance mechanisms were not successful because proponents presented local communities with a unilateral solution rather than involving them in the decision-making procedures.<sup>53</sup> Box 15 proposes three "stages" for a grievance mechanism—dialogue in the field, formal dialogue, and external mediation.

\* In *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, the Office of the Compliance Advisor/Ombudsman for the IFC and the Multilateral Investment Guarantee Agency (MIGA) defines a grievance mechanism as "an institutionalized and organized method consisting of specified roles, rules, and procedures for systematically resolving complaints, grievances, disputes, or conflicts." International Finance Corporation and Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman (CAO). 2008a, at 71.

### **Box 13. Establishing a Project-Level Grievance Mechanism: Key Steps<sup>1</sup>**

#### **Gather Preliminary Information**

- Gather baseline data to anticipate grievances, assess local decision-making processes, and assess local access to justice.
- Ensure that communities participate in design of the grievance mechanism.
- Determine information that will need to be publicly accessible for communities to file grievances.
- Plan to have the grievance mechanism operational before any activity such as exploration, construction, resettlement, or land acquisition begins.
- If any legacy disputes remain from earlier project proponents, begin immediate dialogue with communities to resolve those issues before moving forward with the project.

#### **Identify the Scope of the Grievance Mechanism**

- Identify a set of principles to guide the design of the grievance mechanism.<sup>2</sup>
- Identify categories of grievances that the grievance mechanism will address.
- Determine what remedies the grievance mechanism can provide—halt harmful activity, restrict the timing or scope of an activity, provide monetary compensation, provide an apology, replace lost property in kind, revise community engagement strategies, renegotiate, etc.

#### **Define the Relationship between the Grievance Mechanism and the Project Proponent**

- Identify the relevant decision-maker with authority to resolve each category of grievance.
- Identify which company employee will liaise with claimants throughout the process.
- Clarify the role of the grievance mechanism with respect to contractors.
- Develop a change management process for the transition from construction to operation phase.

#### **Establish a Procedure for Resolving Grievances**

- Establish a reasonable timeframe to respond to and resolve complaints.
- Establish a process to enable dialogue between the claimant(s) and the relevant decision-maker.
- Determine ways that claimants may initiate grievances—community liaison officers, grievance office, in writing, telephone hotline, anonymous drop-box, etc.
- Establish a procedure for investigating claims and collecting evidence.
- Develop a process to appeal decisions, including to other departments in the company.
- Take care not to interfere with communities' access to administrative or judicial remedies.

#### **Conduct Community Outreach**

- Make the grievance mechanism accessible—free-of-cost, locally based liaisons, transparent procedures, protection for whistleblowers.
- Publish procedures for local communities in local languages and in an appropriate format.
- Conduct training and awareness building for community members.
- Require project proponent's employees to undergo sensitivity training on local cultures.
- Clarify the role of the Community Liaison Officer—decision-making authority, links to management, minimal expertise required, familiarity with local communities.
- Ensure continuity of community relations during staff changes.
- Guarantee non-retaliation against those who bring claims, applying company whistleblower protections for local workers.

#### **Ensure Implementation of Negotiated Outcomes**

- Create a system to record and track all grievances. Keep monthly and annual summaries available.
- Develop a system for prompt redressal, including payment and compensation.
- Develop a process to change project activities when necessary to prevent further grievances.
- Provide each claimant with a written and signed record of the agreed outcome of the grievance process.
- Report regularly to communities on progress towards resolving grievances.
- Develop indicators to measure the success of the grievance mechanism.<sup>3</sup>
- Periodically review, report on, and improve the grievance mechanism.

#### **Notes**

1. Recommendations in this table are drawn in part from Rees, Caroline. 2008. Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders, Cambridge, Massachusetts: Corporate Social Responsibility Initiative, Harvard University; and the recommendations of the IFC CAO in project assessments discussed throughout this report. For guidance in designing a grievance mechanism, see International Finance Corporation and Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman (CAO). 2008a. A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. Washington, DC: CAO.
2. See Ruggie, John. 7 April 2008. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. U.N. Doc. A/HRC/8/5 (Human Rights Council), at ¶ 92, 94, which suggests that all non-judicial grievance mechanisms should be legitimate, accessible, predictable, equitable, rights-compatible, and transparent. Caroline Rees also emphasizes that the additional principle of dialogue should apply to company-operated grievance mechanisms, because companies do not possess the legal authority to be "both defendant and judge." Finally, Rees 2008 argues that grievance mechanisms should incorporate the principle of learning, whereby companies analyze patterns and systemic issues to improve their dispute resolution capacity over time.
3. For a sample set of indicators, see Rees 2008, at 41.

**Achieving early resolution.** In many cases, the CLO will be able to immediately resolve grievances that local communities raise. The proponent can improve the efficiency of grievance resolution by taking several, practical measures. This includes clearly defining the CLO's authority to resolve grievances; and ensuring that the CLO records all grievances, provides the claimant with a copy of the record, and submits the records to the proponent on a regular basis.

A procedure should also be in place for community members to speak directly with project decision-makers upon request, or when the CLO lacks the authority to resolve that particular type of grievance. Some proponents have established a grievance office or multi-stakeholder panel that facilitates dialogue with the appropriate company personnel. In smaller scale projects, it might be more feasible to organize ad hoc meetings between the community and company decision-makers.

**Building community trust in a grievance mechanism.** Grievance mechanisms will only succeed in reducing risks for project proponents if communities choose to use them. To ensure that a grievance mechanism is culturally appropriate, project proponents should involve communities in the mechanism's design. From the outset, proponents should also: (1) clarify what remedies are available; (2) set aside adequate budget and staff resources for the mechanism; (3) build community capacity to understand the project's environmental and social management plan; and (4) agree to jointly review the outcomes of the grievance mechanism with communities on an annual basis.

To help build capacity, local third parties such as civil society, legal experts, or university faculty, can help improve the quality of dialogue in the grievance process. During construction of the BTC oil pipeline in Azerbaijan, for instance, a high number of unresolved complaints led to an erosion of local support for the project. As a result, both the Caspian Development Advisory Panel and the IFC CAO recommended that the project proponent use independent fact-finders or arbitrators to gather the baseline data necessary to resolve the grievances.<sup>54</sup>

**Independent grievance mechanisms.** Project-level grievance mechanisms are not intended to replace local courts of law.

Some proponents of large-scale projects have found themselves embroiled in controversial issues, such as mass resettlement, accusations of abuse or torture of

community members, or contamination of water and food sources.<sup>55</sup> Under such circumstances, while a grievance mechanism can provide a forum for dialogue between stakeholders, communities might not be willing to respect the outcomes of the process if they perceive the mechanism to lack credibility or independence. In such cases, it may be necessary to refer the case to an external, independent body, such as a mediator, arbitrator, ombudsman, or court.<sup>56</sup> This can create a degree of uncertainty for project proponents,<sup>57</sup> but can also lead to a less adversarial and more constructive relationship with communities. If claimants have the right to raise grievances to an external body, and accept that this option should take place only after the grievance mechanism is exhausted, they may be more willing to attempt good-faith dialogue with the project proponent.

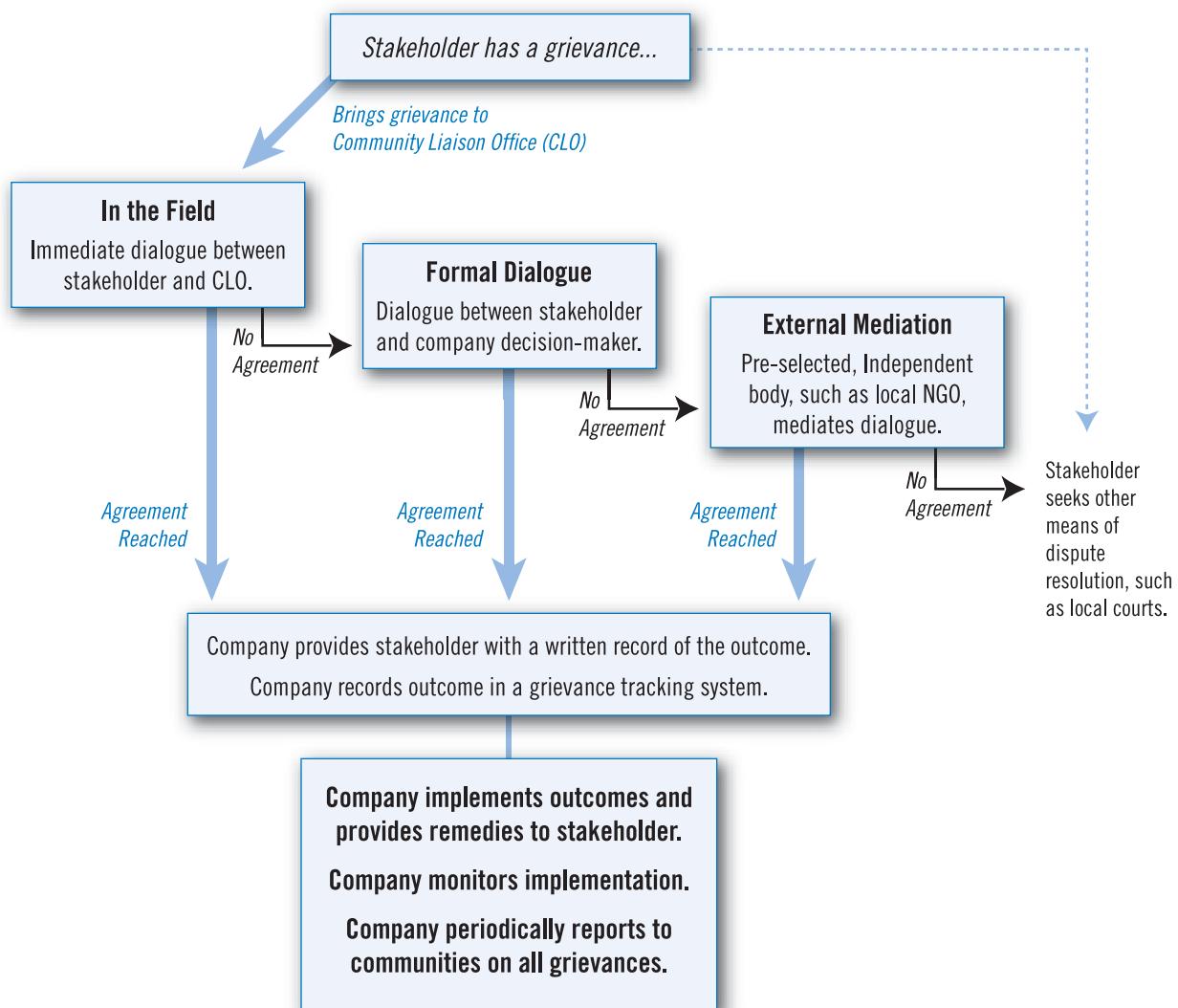
#### Box 14. Benefits of a Formal Grievance Mechanism

- **Detecting Systemic Problems:** Some projects impact several communities across a broad geographical area. Informal, ad hoc communications may not detect systemic problems across the entire project. Formal recording and tracking of grievances can help identify and monitor trends.
- **Personnel Turnover:** Company personnel often change during the years it takes to plan, construct, and operate the project. Different companies might manage different phases of the project, especially during construction and operation phases. A formal structure is more likely to adapt to transitions than one based on personal relationships.
- **Simultaneous Presence of Various Actors in the Community:** Several company departments or contracting companies may have a simultaneous presence in a community. Having a predetermined procedure in place clarifies the relationships between local communities and company departments, employees, and contractors. Uncoordinated management of grievances can lead to mixed messages, confused decision-making, and reduced responsiveness to community concerns.
- **Diverse Communities:** Members of local communities may have a diverse range of interests, especially where communities are not homogenous or have several minority groups. Informal conversations might not consider the interests of all members of communities, leading to the perception of unequal distribution of benefits.<sup>1</sup>

#### Notes

1. In the case of the Allain Duhangan dam project in India, for instance, IFC's CAO found that informal communications did not prove to be an effective way to engage local communities: "Both the company and community continue to rely on informal communications and dispute resolution to address ongoing community issues and concerns. Community issues are typically dealt with over the phone and/or in-person by company leadership and/or the community engagement team.... While these methods have been largely rapid and effective in addressing villagers' concerns, much of the Jagat Sukh community is still unclear about with whom the company is speaking, what decisions are being made, and whether or not those decisions represent the broader interests of the community." IFC CAO, Progress Rpt., Complaint regarding the Allain Duhangan Hydropower Project (Aug. 2006), at 7.

**Box 15. Example of a Project-Level Grievance Mechanism**



## PRINCIPLE 7: PROMOTE PARTICIPATORY MONITORING BY LOCAL COMMUNITIES

### The Challenge

Community engagement depends on community access to information.<sup>58</sup> Without information on the proponent's project-related environmental and social performance, there is a risk that rumor and misinformation will replace factual evidence. Subsequently, community opposition may arise even if the proponent complies with its commitments.

### Benefits

Although it can require significant time and expenses, participatory monitoring provides communities with greater technical understanding and a credible source of information about the project.<sup>59</sup> Participatory monitoring is a process through which local communities systematically track the impacts of a project, and work jointly with proponents to resolve any concerns that are detected.<sup>60</sup> This builds capacity for more informed dialogue, and helps to improve the quality of the community engagement process. This also helps proponents to manage reputational risks as well as build community trust for any future project activities.

### Approaches

In order to ensure the proponent's and contractors' compliance with the environmental and social management plan, monitoring generally begins during the impact assessment, and continues on a regular basis during construction and related activities.

Companies, financial institutions, and governments routinely hire consultants to monitor a project proponent's compliance with environmental and social commitments. Equator Principle financial institutions, for instance, hire consultants to measure compliance with the project's environmental and social management plan, and with the IFC's Performance Standards. These consultants report to their clients and do not otherwise make their findings publicly available.

However, proponents increasingly involve communities in monitoring of high-profile projects. While communities may sometimes consider other sources of information to be reliable and adequate, providing communities with the option of participatory monitoring can be an important trust-building exercise. Participatory monitoring can be particularly effective in high impact projects. For example, the proponent of the controversial Allain Duhangan dam in India, with the support of IFC's and MIGA's Compliance Advisor/Ombudsman

(CAO), prepared a public commitments register of its environmental and social obligations. The proponent agreed to meet with local communities on a monthly basis to discuss progress on these commitments, and to allow participatory verification.<sup>61</sup>

Similarly, in 2005 in response to opposition to the Marlin mine in Guatemala, project proponent Glamis Gold (through its subsidiary Montana Exploradora de Guatemala S.A.) created a Community Environmental Monitoring Committee. Local communities agreed to participate on the condition that the committee was independent from the proponent, and that the proponent would respond to the committee's recommendations. Six communities selected representatives to participate on the committee using local decision-making methods. After taking its first water samplings in 2006, the committee visited participating communities to report on its findings.<sup>62</sup>

**Implementing monitoring activities.** Participatory monitoring involves activities such as scientific sampling, consultations with local community members, and review of the proponent's commitments in the environmental management plan and the impact benefit agreement.<sup>63</sup>



©NON-TIMBER FOREST PRODUCTS, EXCHANGE PROGRAMME FOR SOUTH AND SOUTHEAST ASIA

### Box 16. Case Study: Conflict Resolution Through Dialogue

In the 1980s, the Peruvian Government began developing the Tintaya open-pit copper mine in the Andes. The project led to serious impacts on local communities that were not immediately addressed, such as forcible evictions without adequate compensation, water and air pollution, and violence by project security forces. In 2002, Oxfam Australia helped establish a dialogue roundtable for representatives of local communities, civil society groups, and the proponent to discuss specific issues related to land, sustainable development, human rights abuses, and the environment. Members of the roundtable researched grievances, reported findings, and implemented recommendations. While some community members expressed concern about the speed of implementation, the dialogue roundtable was successful in resolving many of the communities' long-standing grievances.

#### Notes

Oxfam Australia Mining Ombudsman, Case Study: Tintaya, Peru,  
<http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/tintaya>.

Reporting on findings might take the form of community presentations, score cards, or any method that is culturally appropriate and tailored to the unique situation of the community.\*

\* In 2008, the IFC CAO released an advisory note, *Participatory Water Monitoring: A Guide for Preventing and Managing Conflict*, which outlines methods for communities to monitor a project's water usage—such as observing the proponent during its monitoring activities, working with an independent technical expert, and generally watching for changing conditions in water quality and quantity. CAO 2008b, at 25–27.

**Building capacity.** In many cases, local communities will not have sufficient technical understanding to monitor and report on extractive and infrastructure projects. Proponents can resolve this issue through training for community members. For the BTC pipeline project in Azerbaijan, the proponent hired local partners such as Open Society Institute Azerbaijan to facilitate training for NGO monitoring groups, and provided access to construction sites, documentation, and personnel.<sup>64</sup> Capacity issues can also be resolved through use of multi-stakeholder monitoring teams, which might include local community representatives, government officials, and independent experts. For instance, the Philippines Mining Law requires a “multi-partite monitoring team” to be operational before the proponent of a mining project can receive an environmental compliance certificate. This body is composed of representatives of the national government, affected communities, indigenous communities, an environmental civil society organization, and the project proponent.<sup>65</sup>

**Funding participatory monitoring mechanisms.** Project proponents often fund the creation and training of independent participatory monitoring mechanisms. For instance, some companies establish a trust fund to pay the costs of the monitoring, and require the monitors to report publicly on how the funds are spent.<sup>66</sup>



©ANDREW MILLER, AMAZON WATCH



© JIMMY A. DOMINGO

# Conclusion and Next Steps

Extractive and infrastructure projects do not exist in a vacuum—they will both affect and be affected by the surrounding communities and environment.<sup>67</sup> Many proponents recognize the need to engage communities during design and implementation of projects, but these efforts must be grounded in an understanding of the complexities of local political and community dynamics. Community engagement can be expensive and time-consuming, but if done well can create win-win situations for the proponent and communities over the life of a project. Yet, as our analysis of existing guidance reveals, gaps remain in the knowledge base and application of community engagement standards. To address these gaps, we recommend the following next steps:

## FOR PROJECT PROONENTS AND INDUSTRY ASSOCIATIONS: IDENTIFY AND PROMOTE BEST PRACTICES

Proponents of extractive and infrastructure projects should prioritize the collection and public dissemination of community engagement best practices, including examples of how community engagement creates value for companies. The seven principles proposed in this report can serve as a framework around which best practices can be collected.

## FOR FINANCIAL INSTITUTIONS: INCREASE DISCLOSURE, PROMOTE IMPROVED COMMUNITY ENGAGEMENT

Financial institutions can play a critical role in guiding their clients to link community engagement with project risk management, and should send strong signals to



© SONNY YABAO

their clients that community engagement is a priority. By improving their own public reporting on community engagement, financial institutions can promote more open sharing and improvement of engagement strategies. For example, the International Finance Corporation (IFC)—the private sector financing arm of the World Bank Group—should begin to routinely disclose how it determines that each of its projects has “broad community support.” Similarly, the Equator Principles financial institutions should disclose the projects where they are applying the IFC Performance Standards.

## FOR CITIZEN ORGANIZATIONS: ADVOCATE FOR INCLUSIVE, ACCOUNTABLE AND TRANSPARENT PROCESSES

The ultimate goals of community engagement are tangible outcomes, such as providing benefits and mitigating risks to improve the lives of communities and strengthen a project’s viability. However, these outcomes often depend on the integrity of the process for achieving them. Community engagement that is inclusive, accountable, and transparent is more likely to result in optimal outcomes for both communities and project proponents. Informed by this report, citizen organizations supporting affected communities can more clearly articulate the type of processes in which they would like to engage.

When communities have the opportunity to collaborate with project proponents during the design and implementation of a project, proponents can more effectively identify and mitigate potential impacts, prevent harm, and shape the project to fit local conditions. Communities, in turn, can have a voice in determining how they will benefit from a project and whether the project and associated benefits fits their development priorities. This creates local ownership and support for the project, which is also good for the bottom line.

# Selected Resources

For more resources and case studies on community engagement, please visit the website of WRI's International Financial Flows and the Environment project at <http://www.wri.org/iffe>.

## Community Engagement Guides and Toolkits

CommDev website (IFC Oil, Gas & Mining Sustainable Community Development Fund). Available at: <http://www.commdev.org>.

Foti, Joseph et al. 2008. Voice and Choice: Opening the Door to Environmental Democracy. Washington, DC: World Resources Institute.

Goodland, Robert. 2008. WRI Informative Memo for Access Law & Practice: Environmental and Social Assessment. Washington, DC: World Resources Institute.

Hanson, Craig, John Finisdore, Janet Ranganathan & Charles Iceland. 2008. The Corporate Ecosystem Services Review: Guidelines for Identifying Business Risks & Opportunities Arising from Ecosystem Change. Washington, DC: World Resources Institute.

Instituto del Bien Comun. 2008. Metodología de Mapeo Territorial: Comunidades natives Cacataibo. Peru: Instituto del Bien Comun.

International Alert. 2005. Conflict-Sensitive Business Practice: Guidance for Extractive Industries. London: International Alert.

International Council on Mining & Metals, World Bank, and Energy Sector Management Assistance Programme. 2005. Community Development Toolkit. Washington, DC: World Bank.

International Finance Corporation (IFC). 2007. Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets. Washington, DC: IFC.

International Petroleum Industry Environmental Conservation Association (IPIECA). 2006. Human Rights Training Toolkit for the Oil and Gas Industry. London: IPIECA.

International Petroleum Industry Environmental Conservation Association (IPIECA). 2008. Creating Successful, Sustainable Social Investment: Guidance document for the oil and gas industry. London: IPIECA.

Parker, A. Rani et al., 2008. Managing Risk and Maintaining License to Operate: Participatory Planning and Monitoring in the Extractive Industries. Washington, DC: The World Bank Group.

Ranganathan, Janet et al. 2008. Ecosystem Services: A Guide for Decision Makers. Washington, DC: World Resources Institute.

## Community Engagement Laws and Policies

Equator Principles: A benchmark for the financial industry to manage social and environmental issues in project financing. 2006.

International Council on Mining & Metals (ICMM). 2008. Position statement: Mining and indigenous peoples. London: ICMM.

International Council on Mining & Metals (ICMM). ICMM Sustainable Development Framework. Available at: <http://www.icmm.com/our-work/sustainable-development-framework>.

International Finance Corporation (IFC). 2006a. Performance Standards on Social & Environmental Sustainability.

International Finance Corporation (IFC). 2006b. Policy on Social & Environmental Sustainability.

Kvam, Reidar. 2008. Rights and Participation: Citizen Involvement in Projects Supported by the World Bank. Washington, DC: World Bank, Latin America and Caribbean Region.

Munilla, Isabel. 2008. Summary Report: How the World Bank Group Gauges "Broad Community Support." 21 November 2008. Available at: <http://www.wri.org/stories/2008/11/how-world-bank-gauges-broad-community-support>.

Republic of the Philippines, An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization and Conservation (Mining Act), Republic Act No. 7942 (1995).

Republic of the Philippines, An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous People, Creating a National Commission of Indigenous People, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and For Other Purposes (Indigenous Peoples Act), Republic Act No. 8371 (1997).

World Bank Operational Policy (OP) 4.01 (1999)  
"Environmental Assessment."

World Bank Operational Policy (OP) 4.10 (2005), "Indigenous Peoples."

World Bank Operational Policy (OP) 4.12 (2001), "Involuntary Resettlement."

## Multistakeholder Standards on Community Engagement

Convention on Biological Diversity, Secretariat. 2004.

Akwé:Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (Akwé:Kon Guidelines).

Extractive Industries Transparency Initiative. Available at: <http://www.eitransparency.org>.

Salim, Dr. Emil. 2003. Striking a Better Balance: The Final Report of the Extractive Industries Review. Washington, DC.

World Commission on Dams. 2000. Dams and Development: A New Framework for Decision-making. London: Earthscan Publications, Ltd. Available at: <http://www.dams.org/report>.

## Grievance Mechanisms

International Finance Corporation and Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman (CAO). 2008a. A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. Washington, DC: CAO.

Rees, Caroline. 2008. Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders, Cambridge, Massachusetts: Corporate Social Responsibility Initiative, Harvard University.

Rees, Caroline & David Vermijs. 2008. Mapping Grievance Mechanisms in the Business and Human Rights Arena, Rpt. No. 28, Cambridge, Massachusetts: Corporate Social Responsibility Initiative, Harvard University.

## Human Rights Obligations of Companies

BankTrack. "Dodgy Deals." Available at: <http://www.banktrack.org>.

Goodland, Robert. 2007. Utkal Bauxite & Alumina Project: Human Rights and Environmental Impacts (India: Orissa, Kashipur). Washington, DC.

Hausmann, Ute. 2006. Germany's extraterritorial human rights obligations in multilateral development banks. Heidelberg, Germany: FoodFirst Informations- und Aktions-Netzwerk (FIAN).

Ruggie, John. 7 April 2008. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. U.N. Doc. A/HRC/8/5 (Human Rights Council).

United Nations Global Compact. Available at: <http://www.unglobalcompact.org>.

Voluntary Principles on Security and Human Rights. Available at: <http://www.voluntaryprinciples.org>.

## Indigenous Peoples and Free, Prior and Informed Consent

Bass, Susan. 2004. Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities. Washington, DC: Environmental Law Institute.

Colchester, Marcus & Maurizio Farhan Ferrari. 2007. Making FPIC – Free, Prior and Informed Consent – Work: Challenges and Prospects for Indigenous Peoples. Moreton-in-Marsh, England: Forest Peoples Programme.

Dalabajan, Dante A., Grizelda Mayo-Anda & Antonio G.M. La Viña. Coron Case Study: A Study on the Experience of the Tagbanua on Free Prior Informed Consent (FPIC), Coron Island, Palawan, Philippines. Coron, Palawan, Philippines: Environmental Legal Assistance Center with support from the World Resources Institute.

Egglesston, Peter. 2002. Gaining Aboriginal Community Support For a New Mine Development and Making a Contribution to Sustainable Development. Edinburgh, Scotland, Energy & Resources Law 2002 Conference.

Goodland, Robert. 2004. Free, Prior and Informed Consent and the World Bank Group, Sustainable Development Law & Policy, Summer 2004.

Herz, Steven, Antonio La Viña & Jonathan Sohn. 2007. Development Without Consent: The Business Case for Community Consent. Washington, DC: World Resources Institute. Available at: <http://www.wri.org/iffe>.

International Labor Organization (ILO). Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. 15 Sept. 1991.

Martin, Shanta. 2007. Free, prior and informed consent: The role of mining companies. Victoria, Australia: Oxfam Australia.

Mehta, Lyla & Maria Stankovitch. 2000. Operationalisation of Free Prior Informed Consent. Brighton, UK: Instit. of Development Studies, prepared for World Commission on Dams.

Perrault, Anne, Kirk Herbertson & Owen J. Lynch. 2007. Partnerships for Success in Protected Areas: The Public Interest and Local Community Rights to Prior Informed Consent. Georgetown International Environmental Law Review, Spring 2007.

Sosa, Irene & Karyn Keenan. 2001. Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada. Ontario, Canada: Canadian Envtl. Law Association.

United Nations Declaration on the Rights of Indigenous Peoples. Adopted by the General Assembly 13 Sept. 2007. U.N. Doc. A/RES/61/295.

## Participatory Monitoring

International Finance Corporation and Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman (CAO). 2008b. Participatory Water Monitoring: A Guide for Preventing and Managing Conflict. Washington, DC: CAO.

# Notes

1. UN Conference on Trade and Development (UNCTAD). 2007. *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development*, at pp. 89-91. Available at: [http://www.unctad.org/en/docs/wir2007\\_en.pdf](http://www.unctad.org/en/docs/wir2007_en.pdf).
2. Kristine Owram. *Financial crisis could be good news for precious metals*. The Canadian Press. 16 Sept. 2008; *Mining stocks down, but financial crisis could be good news for precious metals*. World Mining Exploration News. 17 Sept. 2008.
3. According to the International Finance Corporation (IFC), the private sector financing arm of the World Bank Group, “The purpose of community engagement is to establish and maintain a constructive relationship with affected communities over the life of the project. In some industry sectors, this engagement is considered as an important process that enables the client to obtain and maintain its ‘social license to operate.’ An effective engagement process allows the community’s views, interests and concerns to be heard, understood, and taken into account in project decisions and creation of development benefits. ....” IFC Guidance Note 1 to the Performance Standards, ¶ G46.
4. Herz, La Viña & Sohn 2007.
5. ICMM 2008. *Position statement: Mining and indigenous peoples*.
6. Herz, La Viña & Sohn 2007, at 43.
7. In January 2005, the Machiguenga community in Peru protested the public hearing of the environmental impact assessment for Block 56 of the Camisea II liquefied natural gas project, which delayed the project for four months and delayed the Inter-American Development Bank’s loan disbursement to the project for 18 months. Tom Griffiths. 2007. *Holding the IDB and IFC to Account on Camisea II*. San Francisco, USA: Forest Peoples Programme & Amazon Watch. In October 2006 in Peru, the Achuar community held a fourteen-day blockade of Pluspetrol’s installations, costing the company several million dollars per day in lost revenue. In 2007, the Achuar community brought a lawsuit against Occidental Petroleum in a U.S. Court. Dan Colluyns, *Peru tribe battles oil giant over pollution*, BBC News, 24 Mar. 2008.
8. For a full discussion of these risks, please see Herz, La Viña & Sohn 2007, at 5, 13-14. See also, Amnesty International, *Taking Stock of Corporate Behavior—Using Shareholder Activism to Defend and Promote Human Rights*, <http://www.amnestyusa.org/business/shareholder.html>.
9. Bank Information Center, “Ahafo Gold Mine,” <http://www.bicusa.org>.
10. The Inter-American Development Bank’s Environmental and Social Impact Report (2003) for the Camisea liquefied natural gas project in Peru cited a high risk for prostitution, domestic violence, and alcoholism when construction worker campsites were located near local communities.
11. A protest against the proposed Phulbari Coal Project in Bangladesh took place in 2006. Critics claimed that the project would displace over 120,000 people, reduce access to drinking and irrigation water for another 220,000 people, and contaminate soil and water with acid mine drainage for at least 35 years. In March 2008, the Asian Development Bank withdrew from its three-year involvement in the project, sending a signal to other investors about the risks of the project. See BanglaPraxis press release, *Asian Development Bank Pulls Out of Controversial Phulbari Coal Project in Bangladesh!* 3 Apr. 2008, <http://banglapraxis.wordpress.com>.
12. Ruggie 2008, at ¶¶ 54, 57.
13. UN Global Compact, Principle 1.
14. The responsibility to respect human rights also requires companies to avoid complicity in a host government’s human rights violations. According to the UN Global Compact, complicity occurs when a company knowingly assists a government in violating human rights, benefits directly from another’s human rights abuses, or fails to raise the question of systematic or continuous human rights violations in its interactions with the appropriate authorities. UN Global Compact, Principle 2. One of the highest risks in energy and extractive projects involves the use of security forces. Many proponents and financial institutions have faced reputational and other damage when private or state security forces killed or injured members of local communities.
15. Voluntary Principles on Security and Human Rights.
16. Extractive Industries Transparency Review.
17. ICMM Sustainable Development Framework.
18. ICMM’s position statement on “Mining and Indigenous Peoples” commits members to begin engagement “at the earliest possible stage...prior to substantive on-the-ground exploration.” ICMM requires members to pursue “agreement with Indigenous Peoples and other affected communities on programs to generate net benefits (social, economic, environmental and cultural), that is benefits and opportunities which outweigh negative impacts from mining activities.” The position statement recognizes the need for a grievance mechanism, such that “Indigenous Peoples as well as communities as a whole will be provided with a clear channel of communication with company managers if they have complaints about a mining operation and transparent processes through which to pursue concerns.” Furthermore, members are required to seek “broad community support” for new projects and activities, and to recognize that “following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted.” ICMM 2008. *Position statement: Mining and indigenous peoples*. It is unclear whether these requirements have been consistently monitored or achieved in practice.
19. ICMM, World Bank, and Energy Sector Management Assistance Programme 2005. Available at: <http://www.icmm.com/page/629/community-development-toolkit>.
20. IPIECA website. Available at: <http://www.ipieca.org>.

21. The Performance Standards require clients' community engagement efforts to include "free, prior, and informed consultation" and the "informed participation of the affected communities" from early in the social and environmental assessment process. IFC 2006b, ¶ 20. IFC staff evaluates this early engagement to judge whether there is "broad community support for the project within the affected communities" at the time when the World Bank Group's Board of Directors votes to approve financing. IFC 2006b, ¶ 20.
- Consultations with communities are required to "be carried out on an ongoing basis as risks and impacts arise," and based on prior disclosure of relevant and adequate information, including draft documents and plans." IFC Performance Standard 1, ¶ 21. Additionally, the IFC requires clients to establish a project-level grievance mechanism if "the client anticipates ongoing risks to or adverse impacts on affected communities..." IFC Performance Standard 1, ¶ 23. There are also specific guidelines for projects that affect indigenous peoples.
- For projects that affect indigenous peoples, the IFC requires clients to "establish an ongoing relationship with the affected communities...from as early as possible in the project planning and throughout the life of the project." IFC Performance Standard 7, ¶ 9. If the client proposes to locate the project on lands used by indigenous peoples, the client must "enter into good faith negotiation with the affected communities...and document their informed participation and the successful outcome of the negotiation." IFC Performance Standard 7, ¶ 13.
22. Equator Principles press release, "Equator Principles Celebrate Five Years of Positive Environmental Impacts and Improved Business Practices," 8 May 2008, <http://www.equator-principles.com>.
23. During the environmental assessment process for Category A projects, the Bank requires borrowers to consult project-affected groups and local nongovernmental organizations at least twice, before the terms of reference for the environmental assessment are finalized, and after the draft assessment is prepared. World Bank OP 4.01, ¶ 14. Borrowing governments must disclose relevant material "in a timely manner prior to consultation," including a summary of the project and potential impacts during initial consultations, a summary of the environmental assessment's conclusions during the consultation on the draft environmental assessment, and a full draft environmental assessment for all high impact projects. World Bank OP 4.01, ¶ 15, 16. The Bank also requires consultation throughout project implementation "as necessary to address [environmental assessment]-related issues that affect them," for example in Category A projects. World Bank OP 4.01, ¶ 14.
- For all projects that affect indigenous peoples, the Bank requires "a process of free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project..." World Bank OP 4.10, ¶ 6. In its involuntary resettlement policy, the Bank also requires consultations with those potentially affected by projects that anticipate physical or economic displacement. World Bank OP 4.12.
24. For a discussion of the legal framework required for environmental governance, see Joseph Foti et al. 2008. *Voice and Choice: Opening the Door to Environmental Democracy*. Washington, DC: World Resources Institute; see also, Peter Veit et al. 2008. *Protected Areas and Property Rights: Democratizing Eminent Domain in East Africa*. Washington, DC: World Resources Institute.
25. See discussion of "intermediary support organizations" in World Resources Institute (WRI). 2008. *World Resources Report, Roots of Resilience: Growing the Wealth of the Poor*. Washington, DC: WRI.
26. Through its experiences with communities affected by IFC and MIGA-financed projects, the Office of the Compliance Advisor/Ombudsman has identified the risk of "king-making" during the community engagement process. Inamdar, Amar. IFC/MIGA CAO. Presentation at "Tools for Managing Corporate-Community Conflict: Grievance Mechanisms, Participatory Monitoring and Alternative Dispute Resolution." 11 Oct. 2008. Washington, DC: World Bank.
27. For example, the IFC requires that clients demonstrate that they "provided the results of consultation to the project-affected communities, and either: (i) demonstrated how the comments and recommendations made by the project-affected communities have been accommodated in the project design, mitigation measures, and/or sharing of development benefits and opportunities; or (ii) provided a rationale why these comments and recommendations have not been accommodated." IFC 2007. Environmental & Social Review Procedure, at 3.5.
28. IFC 2007, at 63.
29. See e.g., Akwé:Kon Guidelines, ¶ 21.
30. IFC 2007, at 64.
31. Sosa & Keenan 2001, at 9.
32. IFC 2007.
33. Parker 2008, at 22.
34. IFC 2007, at 111-112.
35. Goodland 2008.
36. ICMM 2008. Position Statement on Indigenous Peoples, at ¶2.
37. IFC CAO, Assessment Rpt., Complaint regarding Allain Duhanan Hydropower Project (2004).
38. ICMM 2008. Position Statement on Indigenous Peoples, at ¶2.
39. IFC 2007.
40. Communication with Peter Bosshard, International Rivers, 28 August 2008.
41. UN Declaration on the Rights of Indigenous Peoples, at ¶ 26(2); see also, Herz, La Viña & Sohn 2007, at 5.
42. Goodland 2004, at 67.
43. Philippines Mining Act 1995; Philippines Indigenous Peoples Act 1997. Sections 26 and 27 of the Philippines Local Government Code of 1991 (Republic Act No. 7160) also require the consent of the local government prior to issuance of the environmental compliance certificate for a project that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species.
44. Recent evidence of this right includes the UN Declaration on the Rights of Indigenous Peoples and the Case of the Saramaka People v. Suriname, Inter-American Court of Human Rights, Judgment of 28 Nov. 2007.
45. Aizawa, Motoko. Head of IFC Policy and Standards Unit. Presentation during panel discussion on "How the World Bank Group Gauges 'Broad Community Support' for Projects." 9 October 2008. Washington, DC: World Bank.

46. In the United States, several communities and companies have negotiated similar agreements called “Good Neighbor Agreements” and “Community Benefit Agreements.” See Laurie Kaye & Jerilyn Lopez Mendoza. 2008. *Everybody Wins: Lessons from Negotiating Community Benefits Agreements in Los Angeles*. Los Angeles: Envtl. Defense; Parker 2008, at 2. In some countries, the law requires impact benefit agreements, e.g. Australia’s Aboriginal Land Rights (Northern Territory) Act 1976.
47. Sosa & Keenan 2001, at 1. See also, Agreements, Treaties and Negotiated Settlements Project, “Summary of Impact and Benefits Agreements,” <http://www.atns.net.au>.
48. DeBeers Canada press release, “Attawapiskat Ratifies the Victor Project Impact Benefit Agreement,” 30 June 2005. Note that in many cases, the specific terms of these agreements have not been made public.
49. Kvam 2008, at 12-13.
50. Perrault et al. 2007.
51. For example, the grievance procedures for the Sakhalin II pipeline project in Russia allow local communities to submit grievances through designated collection boxes, direct contact with local community liaison officers, contact with the project proponent by phone or email, and a website. Sakhalin Energy, Executive Summary of the Phase 2 Environmental and Social Impact Assessment (Nov. 2005).
52. IFC 2007, at 73.
53. Rees 2008; CAO 2008a, at 9. CAO refers to this as the “investigate, decide, and announce” approach.
54. Caspian Development Advisory Panel, Final Report and Conclusions (Jan. 2007), at 8-9; IFC CAO, Assessment Report, Seven Complaints regarding the Baku-Tbilisi-Ceyhan (BTC) Pipeline Project Bashkovi, Dgvari, Rustavi, Sgrasheni, Tetriskaro and Tsikhisjvari, Georgia (Sept. 2004), at 16. In response to this recommendation, the project proponent agreed to conduct a baseline study, but decided to use its contractor rather than an independent fact-finder.
55. Recognizing the potential for security forces to become involved in human rights violations, BP established a security procedure for its Tangguh liquefied natural gas project in Indonesia, in order to investigate violations by the project’s security forces. Tangguh Independent Advisory Panel, Fourth Report on Tangguh LNG Project (Mar. 2006).
56. For example, the grievance procedures might allow a claimant to refer a grievance to an independent body after a certain period of time elapses, after certain steps have been exhausted, or for specific types of grievances.
57. On the BTC pipeline project, BP commissioned an independent “Caspian Development Advisory Panel” to review the project’s compliance with environmental and social standards. The Panel reviewed the project’s grievance mechanisms, and found that they did not effectively resolve disputes because communities did not perceive them to be impartial. The Panel recommended that BP establish an independent ombudsman’s office. BP did not to follow these recommendations, citing the risks to the company in having an external body investigate the internal affairs of the BTC project. Caspian Development Advisory Panel, BP Report on Progress Mar. 2005; BP Response to the Report on Turkey, and Project-Related Security and Human Rights Issues in Azerbaijan, Georgia and Turkey.
58. See generally, Foti et al. 2008.
59. IFC 2007, at 80.
60. IFC 2007, at 79. Similarly, in Alaska, United States, stakeholders have also created Regional Citizens’ Advisory Councils for Prince William Sound and Cook Inlet. The purpose of these councils is to provide a citizen voice in ongoing oil industry decision-making in the region.
61. CAO, *Allain Duhangan Hydro Power Project, India, Complaint Conclusion Report* (Mar. 2008).
62. CommDev, “Participatory Environmental Monitoring, Guatemala,” [http://www.commdev.org/section/projects/participatory\\_environmental\\_mo](http://www.commdev.org/section/projects/participatory_environmental_mo).
63. See e.g., IFC 2007, at 80-81.
64. IFC 2007, at 83-85.
65. Mines and Communities, “Philippines Update,” <http://www.minesandcommunities.org>.
66. For further recommendations on financing participatory monitoring mechanisms, see CAO 2008b, at 25-27.
67. For example, see WRI’s *Corporate Ecosystem Services Review: Guidelines for Identifying Business Risks and Opportunities Arising from Ecosystem Change* (2008).

## ABOUT THE AUTHORS

**Kirk Herbertson** is an Associate in WRI's Institutions and Governance Program, [kherbertson@wri.org](mailto:kherbertson@wri.org).

**Athena R. Ballesteros** is a Senior Associate in WRI's Institutions and Governance Program and leads WRI's International Financial Flows and Environment project, [aballesteros@wri.org](mailto:aballesteros@wri.org).

**Dr. Robert Goodland** is a Senior Fellow with WRI's Institutions and Governance Program, [rbtgoodland@aol.com](mailto:rbtgoodland@aol.com).

**Isabel Munilla** is an Associate in WRI's Institutions and Governance Program, [isabelm@wri.org](mailto:isabelm@wri.org).

## ABOUT WRI

The World Resources Institute is an environmental think tank that goes beyond research to create practical ways to protect the Earth and improve people's lives. Our mission is to move human society to live in ways that protect Earth's environment for current and future generations. Our program meets global challenges by using knowledge to catalyze public and private action:

- To improve the quality of environmental decisions. We collaborate with institutions and civil society organizations worldwide to ensure that decisions about natural resources reflect environmental values as well as people's rights and interests.
- To reverse damage to ecosystems. We protect the capacity of ecosystems to sustain life and prosperity.
- To avert dangerous climate change. We promote public and private action to ensure a safe climate and sound world economy.
- To increase prosperity while improving the environment. We challenge the private sector to grow by improving environmental and community well-being.

In all of its policy research and work with institutions, WRI tries to build bridges between ideas and actions, meshing the insights of scientific research, economic and institutional analyses, and practical experience with the need for open and participatory decision-making.



WORLD  
RESOURCES  
INSTITUTE

10 G Street, NE  
Suite 800  
Washington, DC 20002  
[www.wri.org](http://www.wri.org)

ISBN 978-1-56973-703-3

A standard linear barcode representing the ISBN number 9781569737033.

9 781569 737033

A barcode used for library identification, with the number 3900 printed vertically next to it.