EXECUTIVE SUMMARY

Members of the FPIC Solutions Dialogue met on February 12-13, 2019 in Washington, DC, for the Dialogue's 6th annual member meeting. Themes and highlights from the meeting follow in this public Executive Summary; more detailed issue briefs and case studies are available to members in a separate summary. To learn more about the Dialogue, please visit page 4 or visit fpicdialogue.org.

Context Matters. For successful FPIC implementation (and as a general principle for success with community engagement and development activities), it is essential to develop a strong understanding of the context of a region – the history, traditional governance structures of the indigenous peoples and other communities, their land uses, their past/current experiences with other industries, how communities engage with each other and any issues of conflict or marginalization, traditional roles and economic/social autonomy, and opportunities for women and youth within the communities and in community decision-making. Members discussed Historical Narratives as one particularly valuable tool for understanding the context in which a company seeks to operate.

Contexts can and will evolve over time, and this can impact implementation of agreements for long-lived projects. Company-community agreements should include plans for periodically assessing consultation and decision-making processes, and for revising those protocols to reflect changes in community preference or other dynamics.

Agreements – Structure, Process, and Tone. Company-community agreements are an important component of FPIC implementation, and they can be a tool for developing and maintaining trust and accountability by all involved. But rather than reaching one mega-agreement, developing the following layered agreements may better meet the needs of all involved:

1) Impacts & Compensation – It is essential to reach an agreement acknowledging the environmental and cultural impacts that will take place, how the company is committing to mitigate, manage, and compensate for those impacts, and the consequences for failing to meet these commitments. This agreement results in a clear checklist for the company and provides the community with a clear mechanism for ensuring accountability by the company.

2) Shared Benefits – A second agreement articulating shared benefits provides an opportunity for the company and community to develop a common vision and expectations for future development and benefits. Separating this from the discussion about impacts helps to draw the line between what the company is obligated to do to *compensate for impacts*, and what positive outcomes may be contingent on and fluctuate with other factors.

3) Relationship – A third agreement can provide a common roadmap for establishing and maintaining the desired nature and function of the long-term relationship between the company and community. These agreements can cover details such as the process, frequency, or triggers for ongoing information sharing; decision making protocols, roles, and timelines; the process for flagging, discussing, and addressing conflicts; and the process and frequency for re-evaluating and/or revising any of these protocols. Separating the "relationship agreement" from discussions about impacts and benefits allows for easier renegotiation to recalibrate processes as needs and concerns are better understood, or to reflect shifts within company, community, or contextual dynamics.

All agreements should include strong implementation and management plans, timelines, contingencies/accountability mechanisms for addressing unmet obligations, and protocols for managing conflicts and grievances. They must also include the allocation of resources needed to meet the commitments they contain, including for independent monitors or advisors, or funding/capacity for community members to play identified roles.

The *process* for developing agreements is just as important as finalizing them. And *tone matters*! Communities want to be heard; companies do well to pursue *real dialogue and understanding*, rather than simply to convince communities or secure transactional approvals.

Capacity and Resources. Communities' baseline knowledge around highly technical processes and tools common to industry, such as Environmental and Social Impact Assessments, is often limited. In addition to ensuring that there is ample time for communities to build their understanding of these types of tools, financial and logistical resources may be needed to support communities in accessing anthropological, ecological, and legal advice, as well as other types of technical support.

One often overlooked but critical part of capacity building may simply be helping communities to know their rights and how to exercise them, understand how to utilize grievance mechanisms, and become familiar with other access to remedy – such as governmental mechanisms.

Inclusion. Inclusion – of women, youth, and minority or marginalized groups – remains an important concern, especially in communities where they may not obviously participate in decision making. Valid concerns about "cultural imperialism" often discourage companies from seeking more diverse representation; however, failure to engage more broadly creates a real risk for unintentionally negatively impacting or marginalizing those who are already disenfranchised. It also creates a risk that the company may fail to recognize community concerns or conflicts until they have escalated and threaten to impact the project. It is particularly important to be aware of the existing elements of power reflected in how (and for whom) local land rights are recognized, how (and by whom) household finances and resources are managed or owned, and how impacts and benefits associated with industrial development may be refracted throughout the community.

In past discussions, Dialogue members have reflected that "Do no harm," is an insufficient mantra; companies should instead seek to do *good*. Yet doing good on some issues does not eliminate the possibility of doing harm in others. This discussion continues to evolve as we consider inclusion: although concerns about cultural imperialism are valid, companies must realize that *their very presence* will have some cultural impacts. Industrial projects bring environmental, social, and economic changes, impacts, and opportunities. But unless the social context and dynamics are well understood, "opportunities" for some may actually exacerbate pre-existing inequities or vulnerabilities within communities.

At the same time, promoting inclusion does not necessarily need to begin with an explicit conversation about why companies or governments should "change how things are done here." Companies can encourage inclusive behaviors by modeling it in their own workplaces and processes, by recognizing all parts of the community as neighbors, and by actively seeking to engage with and generate benefits for all.

While there can be challenges around creating opportunities for women, youth, and others to play new roles, there may similarly be opportunities to offset community concerns by also creating new

opportunities for those currently in leadership. Members reflected that while "one woman on a committee" is not enough, at the same time, taking a quota approach may not actually ensure the key objective – to represent a spectrum of diverse *experiences and perspectives* in community and corporate decision-making.

Transparency is a Mighty Tool. A commitment to transparency – and an understanding of public processes – can be a vehicle for many solutions. For instance, publicly acknowledging a community's traditional ownership in an environmental and social impact assessment (which must be approved by the government and which are often made publicly available) can establish a precedent for governmental acknowledgment and for other private sector actors to respect indigenous rights. Similarly, when community leadership may fail to fully inform or consult others in the community, making agreements and responsibilities easily accessible by all community members can enable underrepresented members to assert their rights. However, transparency is not a cure-all; care must be given to protecting communities' proprietary data and sensitive heritage or cultural information, in accordance with community preferences.

The Spirit of FPIC. Several discussions explored the underpinning purpose and intent of FPIC as a right and policy. Members discussed that FPIC is not a standalone right; rather it comprises and is a safeguard for a number of human rights – the right to self-determination; free pursuit of economic, social, and cultural development; and individual human rights. Recognizing the human rights that underpin FPIC is essential for avoiding a 'tick-box' approach to FPIC that undermines its intent. Real FPIC can be assessed by the outcomes - whether peoples' fundamental human rights have been violated.

For communities, the essential value and power of FPIC is not just in *consultation*, but it is in the ability to give or decline **consent.** Indigenous communities must have the ability to say 'no' (or 'yes', or 'yes with conditions').

Recognizing indigenous peoples' right to FPIC is not about elevating indigenous communities over other peoples; rather it reflects a strong awareness of historic treatment of traditional peoples, and is an effort to remove power imbalances that perpetuate. The right of FPIC has been earmarked for indigenous peoples in particular in recognition that non-indigenous peoples have traditionally had more access to remedy through local and national government representation. Companies should pay attention to and be respectful of non-indigenous groups' interests and concerns; however, those groups' support for a project should not trump the ability of indigenous peoples to say 'no' to a project that will affect them.

ABOUT THE DIALOGUE

The FPIC Solutions Dialogue ("the Dialogue") is a multi-sector initiative to develop practical guidance to support free, prior, informed consent (FPIC) community processes relating to mining, oil, and gas projects. The Dialogue focuses on real-world examples to examine challenges, exchange ideas, and distill good practice and guidance from site-based experiences to support the implementation of FPIC.

2019 members included RESOLVE (Secretariat), Asia Indigenous Peoples Pact, Centre for Social Responsibility in Mining, Conservation International, Earthworks, First Nations Women Advocating for Responsible Mining, Forest Peoples Programme, International Boreal Conservation Campaign, Katal Consulting, Landesa, MMG, New Gold, Newmont, Oxfam, Rights and Resources, Shell, Tullow Oil, World Resources Institute, and Yirri Global.

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