

# FPIC Solutions Dialogue



APRIL 18-19, 2017  
MEMBER MEETING

## Executive Summary

On April 18-19, 2017, thirty-three leaders from oil and gas and mining companies and civil society organizations met at RESOLVE’s office in Washington, D.C. for the fourth meeting of the Free, Prior, and Informed Consent (FPIC) Solutions Dialogue (“the Dialogue”). Participants were updated on the evolution of corporate commitments and practices, examined a number of case studies to explore both common challenges and promising approaches to address them, and discussed trends relating to FPIC policy at both national and international levels. Three themes surfaced and recurred throughout the meeting:

- **Components of FPIC can always be incorporated throughout a project’s life cycle.** Though planning cycles are long and complex, and operations can take decades to develop, FPIC can be incorporated and implemented even if it was not considered at a project’s outset. Relationships and agreements can be built, reinforced, and improved during all stages of a project cycle.
- **Political, economic, and social context matters.** Developing an understanding of those drivers and their impact on negotiations at local, regional, and country scales benefits companies, rights-holders, and stakeholders.
- The Dialogue’s in-depth exploration of and learning from **real-world examples** – especially current and ongoing cases – promotes a shared understanding of challenges, approaches, and solutions.

FPIC is increasingly considered a foundational principle for negotiations and agreements. The discussion has also shifted toward a more nuanced understanding of the composite elements (F, P, I, and C), and how those are influenced by rights, relationships, processes, and politics.

*Even when FPIC is not implemented from the outset, it can be incorporated throughout the life of a project.*

Planning at the front-end of project development creates the best conditions for FPIC. However, this is not always feasible – such as when sites are acquired mid-development. In these instances, FPIC implementation can be triggered when changes or expansions to the site are proposed. Relationships can be established, improved, and reinforced; new agreements can be made. Case studies can help us understand how to make improvements at sites where projects are obtained when development is already underway, as at Newmont’s Merian site in Suriname (below).

*The context of a project drives the discussions and relationships that follow.* Political and social conditions at both country and regional scales (e.g., rule of law, governmental recognition of Indigenous rights, advance land-use planning by the government, social and political stability) can significantly impact the likelihood or ease with which FPIC elements can be achieved. Tension can arise between respecting local cultures (and associated power structures) and ensuring broad participation. A highly-developed and fine-grained understanding of a site’s history, setting, and pre-existing relationships is essential. The Dialogue would particularly like to further explore gender perspectives of FPIC implementation.

***Capacity matters at all levels*** – in companies, in communities, in government, and in civil society. In Canada, implementation of government policy and legal interpretation has created an enabling environment for FPIC implementation in some areas. Indigenous treaty rights are recognized in the Canadian Constitution, national and provincial governments respect the rule of law, and principles of FPIC have been integrated at the base level of negotiations. Communities can and have empowered themselves to participate in planning: First Nations peoples in British Columbia worked with the government to become an integral part of the mining code review process alongside labor and industry, and some Indigenous communities have developed their own mining best practice guidance. Shell also discussed the elements of their consultation and capacity building activities and impact and benefit agreements as a basis for discussing their relationship to FPIC in Canada.

Everything is harder for companies, communities, and civil society when government fails to fulfill its development-planning role; expanding knowledge and capacity at different levels of government is an important enabling factor for successful FPIC implementation. At the Las Bambas copper mine in Peru, differences of view on the role of dialogue tables and third party roles in company/community relationships can create asymmetrical expectations.

Yet it was noted that the trend toward legal requirements for FPIC continues globally: also in Peru, reflecting a 2011 law requiring consultation with Indigenous communities, the government recently restarted a planning process for Block 116, even though it had previously awarded leases to two oil companies in the area without consulting the local Awajun and Wampis communities. And in Argentina, the National Ombudsman issued a national resolution that recognizes a community protocol in the “Lithium Triangle” of Northern Argentina, Bolivia, and Chile; the protocol was collectively developed over two years by 33 local communities and must be recognized and respected for any projects based in this lithium-rich area.

***Members see key value in the Dialogue’s exploration of real-world examples***, specifically the best practices and lessons learned from on-the-ground implementation, as well as the challenges and considerations affecting decision-making. We heard about how rights-based negotiations at the Barrick Hemlo mine in Canada led to mutually satisfactory terms (financial and other) between the First Nations communities (Biigtigong Nishnabeg, Pic Mobert, and Métis of Ontario) and Barrick. Formalized cooperation and socioeconomic benefit agreements were implemented with a focus on common goals and objectives. The agreement-making process purposefully integrated elements of FPIC to enhance dialogue between the parties; for example, the inclusion of a formalized dispute resolution process in a Memorandum of Understanding has led to more functional and meaningful agreements.

The Dialogue has also followed developments at the Newmont Suriname Merian gold mine, where Newmont and the Pamakan community recently signed a cooperation agreement containing specific provisions and commitments on employment, procurement, a community development fund, participatory monitoring, artisanal mining, and dispute resolution. Yet creating the agreement was not a straightforward process for several reasons: Suriname lacks a legal framework for collective land titling; the government does not recognize rights specific to Indigenous communities; and Newmont developed the project after it was in an exploration phase for over a decade before the International Council on Mining and Minerals (of which Newmont is a member) had adopted an FPIC position statement. Newmont and members of an independent panel shared findings from a recent review of the Merian mine to advise Newmont on community engagement practices to support operationalization of FPIC. Newmont and RESOLVE also identified current challenges for ongoing discussion by Dialogue members, which we will explore in upcoming webinars and future meetings.

There is also value in actively exploring specific examples of good practice or lessons learned in each of the composite parts of FPIC – such as how to implement the “Informed” element of FPIC. For example, Conservation International offered an experience from South Africa in which the organization shared information about a new project by renting community radio spots, publishing ads in the local language newspaper, and hiring dance troupes to perform in multiple communities that have a strong oral tradition.

While the adoption and implementation of FPIC policies and practices have advanced, ***critical gaps, areas for improvement, and difficulties remain***. Dialogue members recognized that investing additional time at the outset to establish trusting relationships and build active, consistent, and respectful lines of communication can often reduce disruptions and delays later in construction or operations. However, it can be challenging to align internal processes and structures, such as deadlines and budgets, within companies and across different departments. Cultural differences can prove especially difficult for all parties to assess and manage within companies, across multiple companies in a region, across multiple communities being consulted, and between companies and community members.

This meeting reaffirmed the concept that ***FPIC is now part of the business of developing projects*** for leading mining and oil and gas companies. Throughout the meeting, Dialogue members openly shared struggles, insights, and constructive suggestions from industry and civil society experiences. Such information sharing and relationship building – both across and within sectors – continues to prove valuable; future meetings will offer additional time for informal discussions.

The Dialogue is committed to strong and consistent participation from Indigenous peoples across organizations, regions, and countries. Strengthening knowledge of the complex and individualized history of Indigenous peoples in different localities is essential. We want to increase and broaden the participation of Indigenous leaders at the Dialogue table to enrich our discussion.

Steering Committee members agreed that there is a need to bolster the intensity, frequency, and participation of the Dialogue to sustain its momentum; webinars and continuations of case studies may be potential methods to achieve that effect.

## PARTICIPANTS

Barrick, Boreal Leadership Council, Centre for Social Responsibility in Mining, Conservation International, Cooperación, Human Rights Watch, International Boreal Conservation Campaign, Landesa, MMG, Newmont Mining Corporation, Oxfam America, RESOLVE, Rights and Resources Initiative, Rio Tinto, Shell, Tullow Oil, World Resources Institute, and Yirri Global.

## ABOUT THE DIALOGUE

The Free, Prior, and Informed Consent (FPIC) Dialogue launched in 2012 amid the emergence of policies or guidance from the International Finance Corporation (IFC), the International Council on Mining and Metals (ICMM), the Equator Banks, and other institutions requiring companies to secure Free, Prior, and Informed Consent (FPIC) from Indigenous communities on or near prospective concessions. The Dialogue focuses on real-world examples to examine challenges, exchange ideas, and distill good practices and guidance to support the implementation of FPIC. With questions or to request additional information about this meeting or the FPIC Solutions Dialogue, please contact Taylor Kennedy at RESOLVE ([tkennedy@resolv.org](mailto:tkennedy@resolv.org)).