

## **Exploring The Development And Use Of Biocultural Community Protocols To Help Secure Community Interests And Rights In Relation To Extractives**

### **SUMMARY REPORT OF THE MID-TERM PROJECT REVIEW MEETING**

*Cape Town, South Africa, 10-13 February 2015*

#### **Project Overview**

How can Indigenous peoples and local communities (hereafter “communities”) respond to the challenges posed by extractive industries and related infrastructure development? One potential way is through the development of biocultural community protocols (hereafter “community protocols”), which allow communities to collectively document their identity, link customary laws with national, regional and international law, and engage effectively with external parties.

While community protocols have been employed in a variety of contexts, few have been developed specifically in the context of extractive industries and infrastructure projects. Therefore, Natural Justice and its regional partners in Argentina, India, Zimbabwe and Kenya, with the support of the Heinrich Böll Foundation, are jointly involved in an international project examining the development of community protocols by communities dealing with the challenges of extractive industries. The project, entitled “Exploring the Development and Use of Biocultural Community Protocols to help secure Community Interests and Rights in Relation to Extractives,” began in July 2013 and will culminate in a Symposium and publication in 2016 (for more information on the project, click on or enter the following url: <http://naturaljustice.org/our-work/cross-cutting-themes/extractive-industries-and-infrastructure-projects/interregional-work>).

In February 2015, Natural Justice and HBF hosted a mid-term meeting in Cape Town, South Africa, to bring together the regional partners and communities involved in the project to share experiences and update on activities so far. This meeting report provides an overview of the discussions during the meeting, including a brief summary of each community, the challenges and successes at this stage of the project, and overall strategies for moving forward with the work of individual partners, and the project generally. The meeting took place concurrently with the 2015 Mining Indaba and the 2015 Alternative Mining Indaba, also held in Cape Town.

#### **PILOT PARTNERS**

What are good practices for the development and utilization of community protocols as an instrument to better enable communities to engage with extractive industries to safeguard

their rights and uphold others' responsibilities? To answer this and related questions, Natural Justice and its local partners in four countries – Kenya, Zimbabwe, Argentina and India – are working with communities to pilot the development of community protocols to respond to an extractives or infrastructure development. Each community faces its own unique opportunities and challenges, but the project seeks to draw conclusions about the circumstances under which protocols are most useful, and to see whether there are common approaches that can be applied regardless of the context.

## **Kenya**

In Kenya, several indigenous communities in Lamu County on Kenya's northern coast are working together to develop a community protocol to address a massive infrastructure project, and related oil, gas and coal exploration. Local partner Save Lamu, a community based organization, is facilitating the development of the community protocol. The protocol seeks to address inadequate assessments of the project's impact, as well as the lack of appropriate consultation and consent at the beginning and during the project, unclear discussions around benefit sharing, and lack of resettlement plans, among other things.

Since 2011, much work has been done to develop the community protocol, including visits to over 40 villages to gather knowledge, legal training sessions and multi-stakeholder meetings. A draft of the community protocol document has been developed and released for feedback, and an ongoing process of community mapping has begun. In addition, the BCP has been used to engage with stakeholders, including UNESCO and local politicians. In the future, the BCP process will include participatory video mapping, further multi-stakeholder meetings and input on a cost benefit analysis of the project.

## **Zimbabwe**

In Zimbabwe, a community in the Manicaland Province in eastern Zimbabwe is under threat from diamond mining activities. Local partner Chiadzwa Community Development Trust is assisting the community in developing a community protocol. Some members have been relocated to make way for mining, while others have not. The community protocol will support the community's engagement with government and mining companies. It will look to address the issue of proper compensation (on the community's own terms, being compensation for what is on top of the land, as well as the natural resources used) and land (the community only has right of use and not land ownership). Issues of historic grievances, particularly over land, have also been raised.

In the last 12-18 months, over 20 community meetings on the community protocol have been held to discuss representation, governance structures and decision-making (amongst other things). Additionally, legal and negotiation training was held in which not only the communities developing the protocol participated but also other communities from all 10 provinces in Zimbabwe.

## **Argentina**

In Argentina, communities in the north-western part of the country are involved in developing a community protocol with the assistance of local partner Fundación Ambiente y Recursos

Naturales. The communities have self-organised through a roundtable to engage and share information amongst themselves against a common threat – lithium mining. The objective of the protocol is to articulate the consultation and participation process and standards of participation and consultation from the communities upward. The goal of the protocol is to build the rights of communities into the national legal framework. The protocol aims to assist where the legal framework is not clear on how external actors interact with communities. The communities will use the protocol extensively as a tool for rights assertion.

Over the last 12-18 months, a number of workshops have been held in the communities involving initial discussions around the protocol, trainings and workshops on the relevant rights and standards, open debate and consensus building, and the collection of data. Going forward, the community protocol may become an element of a petition before the Inter-American Commission on Human Rights as evidence of what constitutes community “consultation” and “free prior and informed consent”.

## **India**

In India, the community protocol is being developed in the state of Odisha with the assistance of local partner KIRDTI. The “community” for the purposes of the protocol process has evolved over time. Initially it consisted of members of a forest-dependent community, but the process has now expanded to include other groups who live in the same villages but who depend on work in mines for their livelihood. The purpose of the community protocol is to deal with various forms of mining systematically, revive traditions lost due to mining, and attempt to obtain title to land.

Over the last 12-18 months, the focus of facilitation of the BCP process has been to empower communities and support their mobilization, so that community members have a better sense that mining is something that they are able to engage with. In addition, the focus was to ensure that any advocacy strategies were as participatory as possible. The process has included participatory mapping of forest rights, legal training on the Forest Rights Act and other laws that support land tenure; and initial interactions with local authorities and existing companies.

Going forward, the process will work to incorporate the views of the two different communities into the protocol, as well as implementing a paralegal program and a community reflection process.

## **SUCCESSES, USES AND CHALLENGES**

Participants at the meeting identified several successes, challenges and uses in their processes thus far.

### **Successes**

The successes described by participants during the meeting fell generally into two categories: internal community dynamics and external engagement.

## Internal

- Discussion of intra-community dynamics and peace-building to help address past wrongs; linking the environment with human rights; revitalizing community values and practices; and the community's own visions and goals
- Provided a space for communities to build consensus around common interests, raise women's issues, and discuss land and compensation

## External

- Supported recognition of the community's existence, generated interest from outside experts to support local community processes, and provided a written record of rights, such as rights to free, prior and informed consent

### Uses

Participants documented how their BCP processes (or documents) have been used so far:

## External Engagement

- Mining companies, government officials and UNESCO consultants (working on a Heritage Impact Assessment)

## Other Extra-community uses

- Update litigation proceedings,
- Support the formulation of wider community coalitions
- Assist in cost-benefit analysis of a project's economic impacts.

## Intra-community

- Bridge gaps between different communities sharing the same villages and strengthened the knowledge base of traditional knowledge and culture, especially among the youth.

## Challenges

The challenges identified by participants fell into three major themes: context, framing, and process.

### Contextual

- Political issues, such as a lack of will to deal with issues set out in the community protocol, compromised legal systems, and a lack of recognized legal status of community protocols; Keeping the protocol process free from corruption by power brokers. The process sometimes operates in the context of a lack of safety and threats of violence, complicating matters.
- Oftentimes, projects have continued irrespective of the protocol process, and it can be difficult to find partners and allies and engage with all relevant stakeholders.

### Framing

- Decisions about the objective of the community protocol and how to use it and defining the protocol's scope.
- This is particularly relevant where communities involved in such a process are not homogenous.

### Process

- Challenges in defining the "community" for purposes of the protocol
- Deciding who to include and exclude
- Determining the length of time needed to develop a protocol
- Also language barriers, the role of facilitators and how to address internal community dynamics.

### Other Challenges

- Limited resources to engage in a more robust protocol process
- Lack of access to information
- Advocates for the community protocol can be perceived as anti-development, and the
- Difficulty of organizing large volumes of data in developing the protocol.

## Responding to challenges

While many challenges were identified, many solutions were also put forward, including seeking support from human rights groups, increasing media attention around an issue, forming alliances, fostering inclusiveness, holding focused meetings with particular sectors of the community (such as women) and sharing information. Many solutions were also addressed in strategies moving forward.

## STRATEGIES MOVING FORWARD

Given the attendance of participants from all four regions, the meeting served as an opportunity for horizontal learning. Several strategies to deal with cross-cutting issues,

including intra-community dynamics, cost benefit analyses, and engaging in dialogue with companies, were discussed. A summary is below:

#### Intra-community dynamics

- Alliance building with communities and partners working on complementary issues. In Kenya, a community forum has been established that allows disparate communities to find common purpose in spite of their differences;
- Dialogue mapping to track community conflicts and prevent conflicts in the future;
- Basing community protocols on principles rather than specific areas of concern. Principles can function as powerful connectors even in communities where there is disagreement over whether a proposed development would be beneficial. All community members tend to be in favour of rights to consultation/information being implemented, which make them a useful objective for a community protocol.

#### Usefulness of Cost-benefit analyses:

- Development of cost-benefit analyses to test the claims of development proponents. On the one hand it was recognised that it could be a powerful tool to highlight the economic and socio-economic impact of a given project.
- On the other hand it can pose a danger of attributing a monetary value on the intangible, such as the loss of cultural heritage or ecosystems.

#### Dialogue with companies:

- Dialogue with companies present challenges and risks, but they can be a way of addressing impacts caused by development;
- To ensure meaningful dialogue, it is important to identify dividing and connecting dynamics in order to find points of convergence across the community-company divide;
- Dialogue can help humanise the community to external actors, providing such actors with incentives to take the community's views into account.

## TRAINING AND INFORMATION SESSIONS

In addition to the horizontal learning experiences, the meeting also presented an opportunity to offer partner-identified training sessions on (1) community/company engagement; (2) digital security; and (3) Indigenous peoples' and community conserved territories and areas (ICCAs), as well as an information session on social audits.

## CONCLUSION

Over the next ten to twelve months, the emphasis will be on assisting partners to get to a point in their processes where they are prepared to share their community protocols outside of the community and putting their protocols into a format that can be accessed by external parties. Additionally, Natural Justice and HBF will be preparing to bring people together in 2016 to share experiences among the project partners as well as others who have expertise in this area. We anticipate holding three related meetings: a public Symposium to present on the project, an expert meeting to discuss strategies for engaging with extractive industries, and an internal strategy meeting including training sessions. We envision that in these meetings, discussion can be held on some of the complex questions that were raised during the mid-term meeting, including the broad questions of *inclusion* in (identifying who participates) and *scope* (identifying factors such as temporal focus and subject matter) of the protocol process.