

**Community  
Protocols and  
Extractive  
Industries**



Community  
Protocols  
Toolbox

**4**



# 4

## COMMUNITY PROTOCOLS AND EXTRACTIVE INDUSTRIES

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Protocols  
Toolbox

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## Booklet 4

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While community protocols are often developed as a means of interacting with external actors, their targeted use in the context of extractive industries or large-scale investment projects faces a very unique set of challenges due to the sheer magnitude and complexity of such projects. The projects almost always involve a large number of different governmental and non-governmental actors, including foreign and domestic entities, with some operating in the field and others in the background.

Moreover, the rights and obligations of investors are usually defined by an array of domestic regulations, laws, licences and permits, and sometimes by specific investment agreements between the host government and any foreign investors. These agreements, together with national law, often define an investor's obligations regarding consultations with communities.

At least five particular challenges for communities and protocol process facilitators arise from working in the extractives situation:

1. Conceptualising the community for the purpose of the protocol without generating further frictions among communities or community members;
2. Managing and reacting to externally imposed timeframes while keeping the protocol process community-driven;
3. Facilitating the development of a community protocol in a format that makes it a viable tool for external interactions while not imposing a particular format upon the communities;
4. Keeping abreast of project developments, often occurring quickly, and time-frames within which the law allows response;
5. Managing the expectations of community members; and
6. Managing sensitive information.

These concerns and possible approaches to deal with them will be addressed in detail below. At the outset, however, it is useful to summarise the following ‘red-flags’ when supporting the development of a community protocol:

- The process of developing and using a protocol could be overly influenced by certain parties both outside and within the community;
- Protocols may become another top-down imposition by governments or consultants;
- Rich oral histories and traditional knowledge systems can be diluted by written and digital documentation; and
- It may be difficult to ensure community-based monitoring and evaluation of the process and outcomes.

More specifically, the following detailed risks should be considered at the outset of a process:

- The potential need to hasten the process of community protocol development in order to respond to an immediate threat can lessen the inclusivity of the process, causing internal conflict and mistrust;
- The community protocol may be used to coerce communities into agreements;
- Actively raising issues of rights and mobilising communities in response or opposition to certain projects may cause conflict with external actors, particularly in politically sensitive or repressive countries;
- Unrealistic expectations (for example, that mining benefits will be shared in a particular way or that a project may be stopped due to its contravention of national and/or international laws) may be raised within the community, particularly if the community does not have sufficient agency or institutional capacity;
- Focusing on customary laws may further entrench existing power asymmetries such as the exclusion of women and youth in community decision-making processes, or cause conflict where an external actor provides benefits to some members of the community (including traditional leaders, authorities or local elites) at the expense of the community as a whole; and
- Documentation of sensitive information could increase external interest in the location of potentially lucrative resources or knowledge.

These real threats and concerns are particularly relevant when working with community protocols in the context of extractive industries and large-scale investment projects and should be kept in mind at all stages. However, these concerns can be addressed if one is familiar with the detailed local realities within the communities and of the project in question. They should thus not be seen as off-putting but rather as cautious guidance.

## 1. CONCEPTUALISING THE COMMUNITY

Communities are diverse and dynamic. Outsiders often use the term ‘community’ to refer to people living in a geographically defined space without much consideration of what joins them together or what may separate them. People generally know the boundaries of their own community and where another one begins. This understanding of boundaries is governed by relations between groups that are often historically determined. It is fluid and can change over time, particularly in the context of new threats or opportunities. Individuals can also have multiple roles, identities, and alliances. Therefore, those outside a community should not assume that they can meaningfully define a community on behalf of others.

Nevertheless, ensuring clarity about the identity of the community is integral to the process of documenting, developing, and using a community protocol. Above all, the community must define itself and determine how to address external issues. Any descriptions of internal processes or characteristics must accord with the community’s values and perspectives.

Given the particular issues that arise in the context of extractive industries and other large-scale investment projects, the notion of ‘community’ can raise particular issues. The nature of these types of projects can challenge a community’s ownership and management of traditionally owned and utilised lands and territories, introduce concepts such as benefit sharing with all or a few community members and set often unrealistic expectations of better livelihoods and opportunities, particularly regarding employment.

These challenges are often the cause of divisiveness within communities, as community members compete for short-term resources, relying on potentially inadequate corporate social responsibility poli-

cies for future benefits. In practice, this may take the form of benefits given solely to community elites, traditional authorities, or those that represent themselves as leaders or representatives of the community, as well as division and serious conflict between community members competing for opportunities.

Furthermore, mining and other forms of resource extraction often do not only impact one community but rather several communities at the same time. Thus, in the context of extractives, community protocols may serve as a basis on which more communities come together to develop a joint position from which to engage the external parties. This may result in a situation where for the purpose of the community protocol the 'community' is a group of communities that use the protocol to speak with 'one voice' in relation to certain matters, such as articulating a joint FPIC process, proposing mitigation measures or defining benefit sharing framework.

Some communities are finding that, after irregular interactions between their traditional authorities and companies in extractive industries or other large-scale investments, their conception of community does not necessarily include the traditional authority structures that purport to represent them to outsiders. As a consequence, a comprehensive discussion about governance structures should feature strongly in the community protocol process itself, the purpose being to facilitate an authentic account about how community members feel about them and their capacities to respond to certain threats and opportunities. A focus may rest on exploring stories and personal experiences rather than allegations of the validity of decisions.

Furthermore, it is essential to be aware of, and to try to understand the dynamics of the community. Politics and tensions are inevitable in communities, but can be particularly heightened when there is competition for resources, livelihood insecurity and potential threats to collective and individual wellbeing. At the same time though, facilitators should try to maintain a distance from the political tensions that run high, and continue to encourage inclusiveness in the community protocol process. The process should not be used as a tool to create divisions or to advance the political power of certain groups within the community. Above all, it should instil a sense of unity and common vision. If this is not likely to be possible given the current circumstances, a community protocol process may not be appropriate at that moment in time.

This dynamic is further compounded by the fact that investors of-

ten impose their own definitions of the "community" on affected peoples. For reasons of finances and time, they may also request several communities to establish joint representation or, alternatively, they may divide communities by considering only some peoples as affected by particular projects. National laws on the recognition of Indigenous peoples may further affect this process. It is often the sharing and stewardship of and dependency on common resources that provides a point of interaction between community members and communities.

## **Inclusiveness**

Participation and representation are essential to the development and use of community protocols. As much as possible within the local culture and situation, the community protocol should strive to include the full spectrum of perspectives, especially those of women, youth, the elderly, and others who are often excluded from mainstream decision-making processes.

Although it is often not possible to include every single person in a community protocol process, a participatory approach contributes to building greater consensus and collective learning. It also helps community members feel personally invested in the process and outcome, which increases potential for effective social mobilization and tangible change. This may be challenging and time-consuming when working with communities impacted upon by extractive industries and large-scale investment projects, but it is critical.

The alternative is a protocol that is developed with little consultation and participation by community members, raising concerns about inclusiveness and the overall quality of the process and, in turn, raising concerns about representation and legitimacy with the actual community protocol. Feelings of exclusion could lead to internal conflict and divisions, as well as to 'elite capture', characterised by a small but influential group of community members that take advantage of an opportunity to protect or further their interests. An inclusive process can help to address these potential issues.

*One of the most important aspects of facilitating a community protocol process is to manage the expectations of those involved. Establishing realistic expectations at the beginning and throughout the process can help prevent disappointment and provide a mechanism for reflection and evaluation at different stages of the process.*

## 2. MANAGING TIMEFRAMES

The timeframe for the process of documenting, developing, using, and reflecting upon a protocol will vary widely depending on the local context and on external factors, as shown in the list below. Moreover, for many communities, a protocol is seen as an ongoing and evolving process that is part of their long-term plans and strategies. The protocol may thus have no clear 'beginning' or 'ending'.

Factors relevant for timeframes could include, among others:

- Reasons for undertaking a protocol in the first place;
- Agency, motivation, and capacity for mobilization;
- Internal cohesion and clarity of leadership and decision-making systems;
- Available resources (financial, human, time, material);
- Existing experience with key methods and tools;
- Existing research or documentation of key issues that will be included in the protocol;
- New development projects, laws, or other external pressures that will significantly affect the community;
- Environmental degradation, particularly impacting upon livelihoods; and
- Elections or changes in political administration.

One important consideration to keep in mind as a facilitator is whether a community is collectively mobilising and documenting and developing their community protocol in light of the timing and realities of external challenges and opportunities. There is no set rule or formula. Good practice indicates that it should be determined by the local situation and by the community's priorities and capacities. Although practical considerations such as an imminent project commencement, availability of funds or human resources must be taken into account, timeframes should not be determined primarily by external interests or donor requirements.

Generally, most extractive industries follow a five-step life cycle (shown on the following pages). While the details of each process differ immensely depending on the sector and the type of investor and financier, it is possible to make some general observations and recommendations that can inform a community protocol process. For ease of reference, the following discussion will use the example of

mining industries, specifically the development of mines (as opposed to mines with processing sites and infrastructure links).

If a protocol is developed at the initial phase of a mining project, namely, exploration, a community could attempt to define the terms of investor engagements from the beginning. Given a community protocol is a “living document” and evolves per the needs of communities, it could be revised and/or added to as the project evolves, taking into consideration the particular issues at that stage of the project.

Depending on the stage in mining, a number of different community-involved agreements can be concluded, including memorandums of understanding, negotiation agreements, and community development agreements. A community protocol may be able to assist in the development and finalisation of these agreements. For

more information on mining life cycles and interacting with mining companies, see the Canadian Centre for Community Renewal’s *Aboriginal Mining Guide*, available at <http://www.communityrenewal.ca/aboriginal-mining-guide>.

In an ideal situation, and in accordance with international law, communities should be fully and effectively involved in decision-making processes that are likely to affect them at the earliest opportunity and at every stage of the project, including if circumstances or plans change. Current business practice and guidelines developed by financial institutions, however, do not always reflect this right.

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*The five stages of mining (adapted from the Aboriginal Mining Guide)*

<b>EXPLORATION</b>	<b>FEASIBILITY AND PLANNING</b>	<b>CONSTRUCTION</b>	<b>OPERATION</b>	<b>CLOSURE AND RECLAMATION</b>
<p>The first stage of mining - exploration - includes prospecting for resources (geological, geochemical, and geophysical assessments); drilling and the evaluation of drilling results; scoping studies; and possibly prefeasibility studies.</p>	<p>This second stage of mining - feasibility and planning - involves analysis of the results of the scoping and prefeasibility studies during the Exploration Stage. Viability of a mine is further assessed through feasibility studies and environmental assessments to raise financing, and to pass all the regulatory requirements. Exploration activities almost always continue during this stage.</p>	<p>The third phase - construction - is the building of the entire mining facility: the mine itself, the processing plant or “mill,” and the associated infrastructure, including all the roads, rails, sewer and water lines, housing needed to support the operation. This stage takes place after all the permits and regulations have been confirmed.</p>	<p>The fourth phase - operation - refers to the operation of the mine. A mine is in operation when people and equipment are actually extracting minerals from the earth. After extraction, the minerals are processed into metals, non-metals, or industrial mineral products.</p>	<p>The final stage - closure and reclamation - may occur when the mineral that has been mined has run out, or costs have risen. The time taken to close the mine depends on the scale of the operation. In addition, the site must be returned to its natural state or something close to that, so a mine that has had a huge impact on the environment will likely take longer to close. Usually, the plans for closing the mine are drafted during the (third) Construction Stage. Closure involves shut-down, decommissioning, reclamation, and post-closure.</p>

### 3. IDENTIFYING AND ADDRESSING THE STAKEHOLDER

Depending on their objective, communities may decide to use a particular format for the final outcome of their community protocol process in order to communicate their needs and rights to outsiders or to directly respond to one of the processes outlined above. The different approaches may be dependent on the timing of the project and whether or not the community's response is aspirational or defensive. For example, a community protocol might outline a number of expectations and a community vision that embraces certain elements of the investment project. It could also (or alternatively) serve as a means of documenting existing rights with the aim of defending them against external intrusion by the investment project. Whether a community protocol is seen as an aspirational or a defensive tool can depend on the stage of the investment project and on the community's history of engagement with the project. Some examples are shown below.

#### *Defensive and aspirational aspects of the community protocol*

**DEFENSIVE** at project development stage:

- \\ Overall objection to project and/or process being undertaken
- \\ Objection to project elements due to effects on community-owned lands or resources

**ASPIRATIONAL** at project development stage:

- // Requesting respect for community development plan
- // Requesting equitable sharing of costs and benefits
- // Requesting regular information exchange

**DEFENSIVE** during operation:

- \\ Denouncement of fundamental rights violations
- \\ Denouncement of expropriation or displacement
- \\ Denouncement of environmental impacts

**ASPIRATIONAL** during operation:

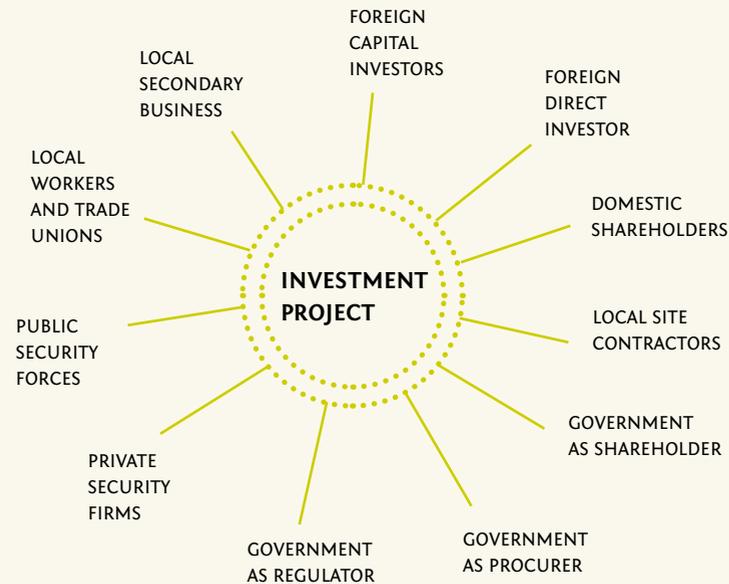
- // Calling for greater or more effective participation
- // Requesting support for local livelihood development

In order to clearly articulate these and other assertions, whether aspirational or defensive, communities might feel that they have to adopt a particular approach that follows the 'language of the outsider' instead of using a format more familiar to them. Ensuring that external actors can understand a community protocol is a key part of fostering constructive dialogue and engagement; if they can't understand it, it is likely that tensions will only increase. At the same time, however, facilitators must keep in mind that community ownership of their protocol is always more important than the community protocol meeting the expectations and preferences of the investor or other external actors. Thus, the decision on the format and formulation of a community protocol must rest with the community and should not be determined solely by the targeted outcome or external demands. One option may be to have two different protocols emerging out of the process, one that remains internal and one that speaks directly to the respective external audience in a format that is designed for that purpose.

Moreover, as investors and other external actors might not always listen to the requests of communities, and as expectations are often not met, there is a risk in defining the purpose of a community protocol too narrowly and in focusing on only one process and one stakeholder. This is further compounded by the complex stakeholder environment that characterises extractive industries.

Extractive industries and large-scale investment projects usually involve an array of external private and public actors, with the chain of command and accountability being unclear for communities, NGOs and local officials alike. Moreover, extractive industries and large-scale investment projects usually incorporate a number of sub-projects, complicating community engagement with external actors. A mining site, for instance, often consists of the actual mine, refineries and smelting and concentrator sites. Harbour projects, on the other hand, can include the construction of road infrastructure, energy plants and housing sites. A non-exhaustive stakeholder map of interests that can generally be found in large-scale investment projects, whether it involves extractive industries or otherwise, is shown in the diagram on the following page.

*Range of external stakeholders.*



All of the stakeholders in the diagram above are potentially relevant to an extractives project. The mining industry has its own specific list of interested players as described below:

**GOVERNMENT**

Manages mineral claims and provides permits for exploration. Often receives some benefits as a result of exploration and mining licences and through the receipt of taxation for minerals mined.

**PROSPECTORS**

Using geological maps and other tools, explores for minerals that could lead to a mine.

**JUNIOR EXPLORATION COMPANIES**

Smaller companies that look and test for marketable ore deposits. May also own small operating mines. Juniors generally make their money by swelling properties they have explored to larger companies.

**MAJOR MINING COMPANIES**

Employ many people with a wide range of skills and in every stage of the mining business. Make their money from the sale of the commodity they are mining.

**TECHNICIANS**

Specialists in complex tasks like warehousing, laboratory or environmental work, and computer services.

**SERVICES PROVIDERS**

Independent businesses that are contracted to supply a mine with some of its needs. Drillers, couriers, helicopter pilots, geophysical surveyors, geologists, and caterers are all service providers.

**EQUIPMENT SUPPLIERS AND MANUFACTURERS**

Service providers who build, supply or maintain mining equipment such as machinery, drills, trucks, and conveyors.

**CONSTRUCTION COMPANIES**

Build mining infrastructure, like roads, bridges, buildings, and processing facilities.

**INDUSTRY ASSOCIATIONS**

Address issues common to companies active in a sector of the economy. They also represent the interests of those companies before the public and government.

**STOCK MARKET INVESTORS**

Channel their own capital or that of clients into the mining industry. They are especially important during the Exploration Stage of mining. Other investors / financiers A number of financing institutions could also be stakeholders, ranging from national and international development banks to private investors.

**CUSTOMERS**

Some customers are manufacturers who purchase metals, diamonds, and other commodities and turn them into products. Other customers are end consumers. They purchase for their own use the products containing the mined material.

This large network of different public and private external actors complicates an interaction with local communities. This is particularly true when local governments do not meet their information obligations. Moreover, especially during the operation stage of an investment, local contractors might be responsible for the day-to-day implementation of community development plans and other arrangements, while the accountability might rest with the foreign direct investor.

For community protocols to have a broad impact, it is recommended that the communities consider focusing them on the full extent of the project, seek to understand the broad range of actors involved, develop a considered strategy, and remain somewhat flexible and open-ended. In addition, ensuring that the process and format of the protocol is driven by the community and not unreasonably influenced by external deadlines or investor demands can increase community ownership.

## 4. MANAGING EXPECTATIONS

One of the most important aspects of facilitating a community protocol process is to manage the expectations of those involved. This includes individuals and groups both within the community and amongst external actors. Establishing a sense of realistic expectations at the beginning and throughout the process can help prevent disappointment and cynicism. It can also provide a mechanism for reflection and evaluation at different stages of the process.

It is important to note that a protocol is not a panacea. There is no guarantee that all of the issues contained in a protocol will be sufficiently addressed or resolved (in fact, this is highly unlikely, except perhaps over the course of several years and with a lot of effort). In the context of extractive industries and large-scale investment projects, it is also important to manage expectations. Protocols may not lead to a complete halt of a project, especially where the community is only one among many affected communities or where the project has already commenced. Likewise, even where investors agree to sharing (monetary) benefits, unrealistic expectations of high shares should not be raised. The same applies to employment opportunities that tend to be given to skilled labour from outside, rather than local community members. On the other hand, unexpected opportunities or consequences may arise that may be directly or indirectly related to the community protocol process. This could range from a mitigation of impact, an improved relationship with relevant government agencies, skills transfers being passed to community members, financial or economic gains due to benefits sharing or reparations or a formal recognition of community rights and related benefits that come with it.

## 5. MANAGING SENSITIVE INFORMATION

Given the often invasive and predatory nature of extractive industries and large-scale investment projects, certain kinds of information that play an important role in a community protocol may be considered sensitive or restricted to certain people or conditions and not generally available to the public, or to companies and their representatives who could use the information to the detriment of communities. Examples of such sensitive information include the identities of key leaders and advocates, locations and names of sacred natural sites, places of worship, or key natural resources, insights into internal dynamics and codes of conduct, and cultural heritage or knowledge held by elders or specific people such as traditional healers. The community should not be afraid to refuse individuals or groups access to this information. Note that there may be different ways of discussing and sharing this information both within the community and with outsiders. These should be respected at all times. Discussions should be held with community leaders and the appropriate knowledge holders about types of sensitive information and how it should be handled (see box below). If the community decides to document or include sensitive information in their community protocol, there should be a system such as authorised individuals with keys or passwords to ensure security of written and digital records until the information is consolidated for external use.

### KEY CONSIDERATIONS REGARDING SENSITIVE INFORMATION.

- Before starting the protocol process, what mechanisms should be put in place to ensure sensitive information is retained by the appropriate knowledge holders?
- Do the locations, names, or any information and traditional knowledge about natural and cultural resources need to be kept confidential or have restricted access?
- Who should and should not know this information within the community?
- Who should and who should not know this information outside of the community?
- If the community would like to include certain elements of sensitive information in their protocol, how can they be presented in a way that respects customary forms of safeguarding and responds

to contemporary challenges? For example, maps could have 'fuzzy' boundaries and exclude certain names or exact locations, visitors could be restricted to public areas, and shared information could be on a 'need to know' basis only.

- What will the community do if sensitive/confidential information is accessed by outsiders without the consent of the community?

It is extremely important to take seriously the protection of sensitive or restricted information. Carelessness with restricted information can easily lead to external damage or destruction to natural sites or resources and to the cultural norms and expectations that otherwise protect them. However, it is a delicate balance; if all information is kept within the community, external decisions about natural resource extraction by companies (that are otherwise keen to incorporate the views of communities) can be made in ignorance and unintentionally harm sensitive sites or resources. Careful consideration of the community's terms and conditions for sharing sensitive information can play a major role in the community protocol. Clarity in how those terms and conditions can be communicated to and respected by external actors can also lead to positive outcomes. In this regard, it is important to try to gain some understanding of the particular extractive industry and the investor that the community is dealing with to assess how they interact and the precautions that communities may or may not have to take in doing so.

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#### BOOKLET 4

Developing community protocols in the context of extractive industries gives rise to unique considerations. This Booklet explores issues such as conceptualizing the community and managing time frames and expectations when extractive industries are involved.

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## NATURAL JUSTICE

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BÖLL  
STIFTUNG