Exploring The Development And Use Of Biocultural Community Protocols To Help Secure Community Interests And Rights In Relation To Extractive Industries.

A Framework Methodology

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PART I

INTRODUCTION

1. BACKGROUND: EXTRACTIVE INDUSTRIES AND BIOCULTURAL COMMUNITY PROTOCOLS

Indigenous peoples and local communities around the world are using a number of advocacy techniques to respond to external threats and challenges caused by the global demand for increasingly scarce natural resources. Many of these threats are the result of industrial investment projects such as extractive industries or infrastructure projects to transport natural resource commodities and semi-processed resources. More often than not, these projects take place in, or otherwise affect, the customary territories and natural resources of Indigenous peoples and local communities (hereafter "communities").

Customary territories and natural resources are usually conserved and sustainably used by communities and often include forests, watersheds, rangelands, mountains, and/or coral reefs. As a consequence they are largely not fully exploited, are often in remote locations and are rich in natural resources, making them the prime targets of land and resource acquisition for the purposes of extractive industries and other resource- and land-intensive large-scale investments. Indeed, the particular impacts of extractive industries operating on or near the territories of Indigenous peoples is specifically addressed by a number of United Nations Special Mechanisms, including the Special Rapporteur on the Rights of Indigenous peoples, James Anaya, and the Working Group on Human Rights and Transnational Corporations and Other Business Enterprises. The negative effects of large-scale infrastructure projects such as road transit lines, industrial harbours and pipelines are equally well- documented, especially as these are often financed by international financial institutions including international development banks. In addition, as the Brazil-Russia-India-China-South Africa alliance continues to build momentum, the development banks in each of these countries (such as the Brazilian Development Bank) are also increasingly financing foreign investment, often without adequate safeguards or recourse mechanisms for communities.

The negative effects of extractive industries on communities derive from a number of factors, such as:

- Inaccessibility (due to lack of land tenure and/or physical access) to land and natural resources either in whole or in part;
- Environmental pollution and destruction;
- Unsustainable exploitation of natural resources vital for the communities' livelihoods;
- Social and cultural intrusion by external forces; and
- Direct serious human rights violations by outsiders.

The environmental impacts and pressures of such projects, combined with social, cultural and political impacts such as loss of culture, degradation of sacred natural sites and discrimination significantly affect communities who largely depend upon their territories and natural resources for livelihoods and wellbeing.

In particular, communities typically have very close relations with their environmental surroundings, with cultural, social and economic wellbeing intricately linked to the lands and natural resources they inhabit, utilise and conserve. The concept of stewardship is a central aspect of a community's life and wellbeing. The effects of extractive industries are thus equally felt at every level of a community's existence, including their physical, economic, social, cultural, and spiritual wellbeing.

The nexus between communities, their ways of life, protection of biodiversity and the broader environment in the form of traditional or customary stewardship is increasingly recognized in national, regional and international legal frameworks. Indeed, there is increasing recognition of the collective rights of communities in international law and international jurisprudence, particularly with respect to traditionally utilised and occupied lands and natural resources, free, prior and informed consent, and rights to customary laws and governance structures among others, all of which are likely to be violated by extractive industry projects. There is thus an undeniable link between environmental, social and cultural destruction caused by extractive industries and, on the other hand, the rights of Indigenous peoples and local communities, with the realization of the latter being threatened by the former. At the same time, however, communities are affirming their rights in existing environmental and human rights law and jurisprudence to:

a. defend and protect themselves and their lands and natural resources against activities on or near their territories that have detrimental environmental, social or cultural consequences;
b. be appropriately consulted (with consent granted or withheld, as appropriate) when such activities are being considered, planned and carried out;
c. call for impact mitigation and compensation where their rights have been ignored or violated and their territories and natural resources affected;
d. call for governments, private actors and civil society to promote low-impact traditional or artisanal extractive practices which do not have (or have reduced) adverse environmental and social consequences and could generate sustainable and long-term livelihood opportunities in the communities; and
e. press external actors responsible for projects (and associated consequences and impacts) to adequately engage with and respect the rights of communities.

Natural Justice is actively supporting partners in advocating for the affirmation and protection of their substantive rights and control over their territories and resources, as well as their procedural rights such as appropriate inclusion in decision-making that affects them. Community protocols are one of the tools that Natural Justice and its partners support communities to develop and use to advocate for and protect communities' rights and uphold others' responsibilities. Community protocols have proven to be useful tools to initiate such empowerment through endogenous, community-driven processes.

A. What are Biocultural Community Protocols?

The term biocultural community protocol (hereafter "community protocol") is used to describe both a process and an outcome that documents a community's territory, customary laws, institutions and decision-making systems, traditional knowledge and natural resource stewardship, governance and/or management systems, visions and plans for the future, issues with and priorities for development, terms and conditions for engaging with external actors, and other characteristics that comprise the community's identity and life plans. In addition, community protocols often identify and link national, regional and international laws and policies with customary laws and practices specific to that community. The identification of these laws helps both communities and external actors understand the

former's rights with regard to their livelihoods, territories, and natural resources, and in light of a particular project.[1]

To date, a few community protocols have been developed or are being developed specifically in the context of extractive industries around the world. As a consequence, "good practice" in the development and use of community protocols in this context is still being developed. Methodologies for using community protocols as a tool to engage with the external actors specific to these sectors, for example, foreign and domestic investors, government agencies, and local contractors, are still to be thoroughly considered and developed. However, given experiences in other sectors, there are strong indications that community protocols are useful tools for communities to achieve a number of inter-related objectives, namely: community mobilisation through internal discussion and visioning; strategy development for external interactions, including the identification of aspirational and defensive demands; and a framework for community-led interactions with external actors, for instance, by clarifying internal decision-making structures and procedures for developing community consensus.

B. What is Endogenous Development?

Endogenous development is broadly considered to be development driven from within Indigenous peoples groups and local communities rather than from the outside by external actors. While open to integrating external knowledge and practices, endogenous development is a process that seeks to enhance local control of development by drawing upon locally available resources, knowledge, skills, strengths, culture and leadership. This process makes peoples' worldviews and livelihood strategies, which often see sustainable development as a balance between material, social, and spiritual wellbeing, as the starting point for development.

Community protocols can and indeed have played an important role in endogenous development processes for communities. Because they are a community-driven undertaking that rely upon internal decisions, protocols have helped communities take further control of their own development by identifying internal resources and goals. Community protocols can be used both by communities and external actors to help drive development in support of communities' customary laws and self-determined visions and priorities for the future.

2. THE FRAMEWORK METHODOLOGY AND PILOT PROJECT

It is against this background that Natural Justice and its regional partners in Argentina, India, Zimbabwe and, Ghana, (and potentially in South Africa, and Kenya), with the support of the Heinrich Böll Foundation, are jointly supporting a number of pilot studies of community protocol development in the context of extractive industries, a symposium to present and analyse the experiences across the three regions, and a final comparative assessment. Overall, the aim of the project is to identify good practices for the development and utilization of community protocols as an instrument to better enable communities to proactively and constructively engage with extractive industries[2] to safeguard their rights and uphold others' responsibilities.

[1] For more information, see www.community-protocols.org.

[2] It is hoped that a case study emerging from Kenya will examine the usefulness of community protocols in the context of a large-scale infrastructure project. There are some common elements between extractive industry and large-scale infrastructure projects including the involvement of external investors and the potential or actual large-

Broadly speaking, methodologies provide guidance as to 'how' to achieve a stated aim. They are "a system of organising principles, based on a collection of strategies, methods, proven practices, and processes, applied in a sequence to achieve the vision"[3]. As frameworks, they describe a process that can be repeated to achieve a desired set of outcomes or vision.

A concise and jointly developed framework methodology has been developed to guide the different community protocol processes and their facilitators, and to provide a framework for comparative assessment of experiences and lessons learned. This document is the framework methodology for the project described above. It provides a roadmap for exploring community protocols in the context of extractive industries and sets out:

- A background to community protocols;
- Action research guidance questions to be completed by each case study to guide reflections on strategy in each individual case and to prepare for the symposium. These guidance questions are to be addressed before and during the process of developing a community protocol and during the use of the community protocol (see Figure 4 below). Six action research questions are also set out – these will be discussed at the symposium;
- Guidelines and suggested approaches for developing and using community protocols;
- Particular considerations and relevant information about the extractive industries sector;
- Specific tools that may be useful in the process of developing a community protocol;
- An outline for a legal review, which is intended to support the action research questions; and
- Useful links to further information.

The methodology will also assist in the coordination and operation of each case study and enable comparative analysis and the distillation of lessons learned, good practices and recommendations at the conclusion of the project.

The methodology is not intended to be exhaustive, since communities will necessarily draw on their own endogenous development processes and their supporting organisations will have experience with various other methodologies. Rather, the methodology is intended to be used as guidance, where necessary, and ought to be tailored to each particular context, as and when necessary.

The project aims to examine the considerations relevant to the effective development and use of community protocols in the context of extractive industries. These considerations are threefold and the action research guidance questions are divided into these three considerations:

1. Structural and contextual considerations, including stakeholder mapping;
2. Assessing the process design, intra-community dynamics and effectiveness of community protocols as a legal empowerment and community mobilisation tool; and
3. Use of community protocols for external engagements.

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scale nature of the projects. Where foreign direct investors are involved, lines of responsibility and accountability are often highly fragmented and detached, making an engagement with prime decision makers challenging. Large-scale projects usually result in highly complex stakeholder environments with a myriad of actors being involved. In addition, the sheer size of projects often amplifies the degree of environmental destruction and human rights violations. Thus, the institutional and procedural challenges faced by communities can be very similar. It is hoped that one case like this will be included to assess the differences and the potential of the methodology for similar infrastructure and/or agricultural investments.

[3] See Draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12).

These guidance questions ultimately prepare participants to discuss the following six action research questions (set out in detail in Section II of this framework) at the symposium:

1. How can community protocol processes support communities in directly engaging and negotiating with companies and/or investors on the basis of free, prior and informed consent, community development agreements and other similar arrangements?
2. How can community protocol processes support communities in engaging with governments to clarify, secure and enforce the protection of their territories, resources and ways of life, including all related rights, affected by extractive industries?
3. At what stage of project development (i.e. exploration, feasibility and planning, construction, operation and closure and reclamation) can a community protocol have the greatest effect with respect to the engagements set out in questions 1 and 2? At what stage(s) is it least effective?
4. How can community protocol processes support communities in using redress mechanisms (for instance, through documentation and legal empowerment)?
5. How can community protocol processes support communities in addressing internal conflicts that arise in connection with extractive industries and large-scale investment projects (such as exclusion or resource control disputes)? What elements are/were essential to address the issue in an endogenous manner?
6. What are general good practices and methodologies of community protocol processes that apply in this context, irrespective of the status of a project, the actors involved and the nature of the communities' aspirations and expectations vis-à-vis the investment project?

In line with the approach of collaborative action research, community protocol processes in Africa, Asia and Latin America will explore the above research questions through action, observation and analysis. The project will follow the broad research process shown in Figure 4 below.

The core element of the framework methodology is the action research guidance questions, set out in Part II. Consideration and documentation of these will provide rich substance to discussions at the symposium and a context and structure for a publication that will be consolidated at the conclusion of the project. Documentation of the research guidance questions complement the six concise research questions set out above. Together, the six research questions and research guidance lists are designed to acknowledge and appreciate that the development and use of community protocols are influenced by important structural and contextual considerations as well as the nature of relationships with specific external actors.

This project is divided into a number of steps:

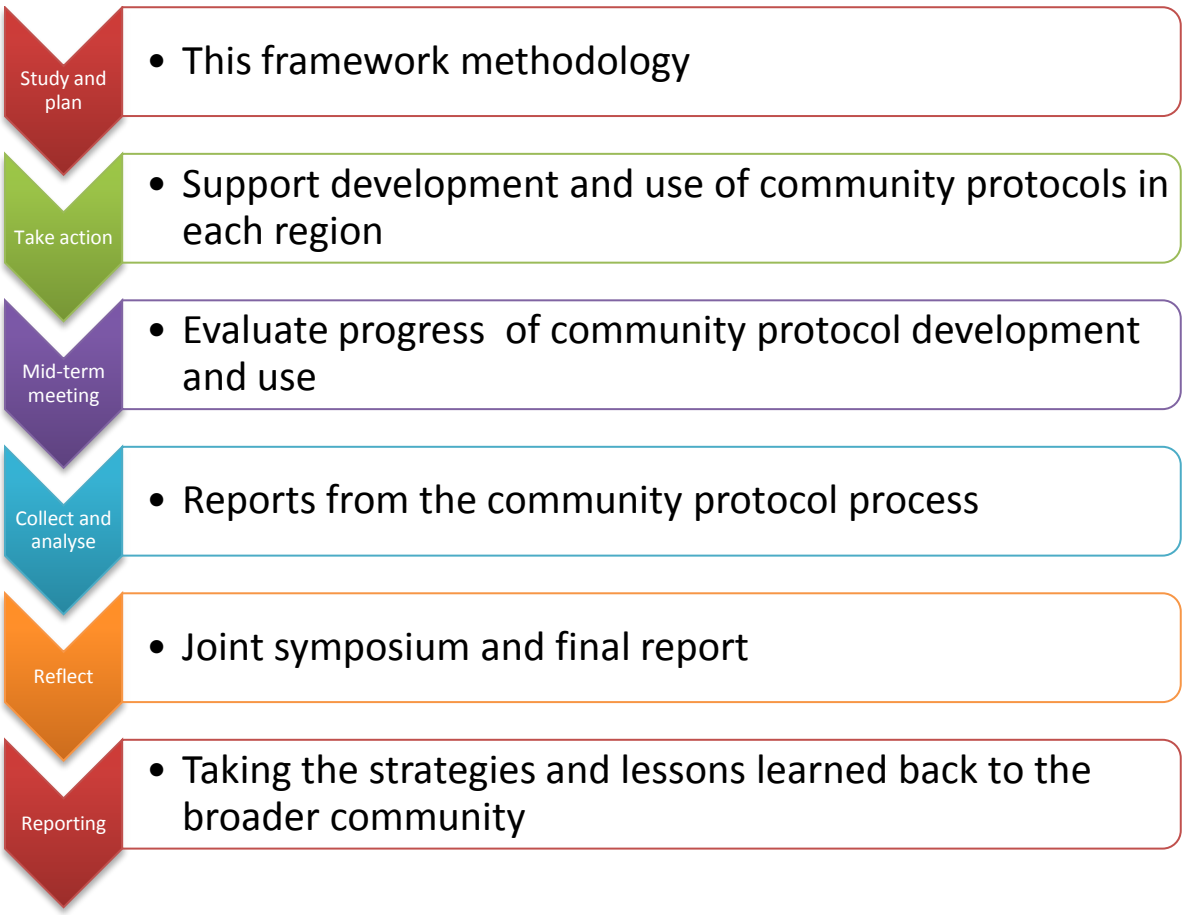


Figure 1: Step-by-step process of key processes within the project.

In summary, the framework methodology is broken down into the following sections:

- **PART I** (above) has included a background to the broader issues, the pilot project and the methodology.

- **PART II:** Clearly articulates the action research questions and more detailed research questions to be explored in each site and country, concerning:
    - Structural and contextual considerations, including stakeholder mapping;
    - Assessing the process design, intra-community dynamics and effectiveness of community protocols as a legal empowerment and community mobilisation tool; and
    - Use of community protocols for external engagements.

- **ANNEXURES I-V:** Set out the general principles that guide the community protocol approach, address challenges and considerations for developing and using community protocols in the context of extractive industries, suggest tools and practices to guide and support each community protocol process, provide weblinks to further useful material and provides guidelines for the legal review.

PART II

ACTION RESEARCH QUESTIONS & RESEARCH GUIDANCE

Communities themselves must define and drive the process of developing and using their community protocols as ownership and inclusivity are of outmost importance to the process. Nevertheless, to support the identification of good practice, it is useful if facilitators were to guide the process with a number of specific action research questions in mind.

The aim of this project is to identify good practices for utilizing community protocols as an instrument that supports communities in mobilising and engaging with external actors in extractive industries, to safeguard their rights and uphold external actors' responsibilities. More specifically, the project aims to answer the following six concrete action research questions, to be discussed at the symposium:

1. How can community protocol processes support communities in directly engaging and negotiating with companies and/or investors on the basis of free, prior and informed consent, community development agreements and other similar arrangements?
2. How can community protocol processes support communities in engaging with governments to clarify, secure and enforce the protection of their territories, resources and ways of life, including all related rights, affected by extractive industries?
3. At what stage of project development (i.e. exploration, feasibility and planning, construction, operation and closure and reclamation) can a community protocol have the greatest effect with respect to the engagements set out in questions 1 and 2? At what stage(s) is it least effective?
4. How can community protocol processes support communities in using redress mechanisms (for instance, through documentation and legal empowerment)?
5. How can community protocol processes support communities in addressing internal conflicts that arise in connection with extractive industries and large-scale investment projects (such as exclusion or resource control disputes)? What elements are/were essential to address the issue in an endogenous manner?
6. What are general good practices and methodologies of community protocol processes that apply in this context, irrespective of the status of a project, the actors involved and the nature of the communities' aspirations and expectations vis-à-vis the investment project?

To support the in-depth discussion of these action research questions at the symposium, preparation questions in the form of guidance questions, have been set out here. As set out in Part I, the additional guidance questions can be broadly bundled into the following three categories:

1. **Structural and contextual considerations, including stakeholder mapping;**
2. **Assessing the process design, intra-community dynamics and effectiveness of community protocols as a legal empowerment and community mobilisation tool; and**
3. **Use of community protocols for external engagements.**

These guidance questions are further broken down into questions that should be considered (and addressed) at particular points of the project – that is, before and during the process of developing a community protocol or in the use of the community protocol itself. Examining these issues in a comprehensive and timely manner ensures effective process design, while also aiding the assessment of the six action research questions after the pilot community protocol processes. For instance, conducting a comprehensive stakeholder and industry assessment before launching the process will enable all actors to assess the community protocol process in its domestic context. A breakdown as to what questions to tackle at which stage is set out in Table 1 and Figure 4 below.

	Timing	**Reporting form**
Structural and contextual considerations, including stakeholder mapping	If possible before commencing or in the early stages of the community protocol process with continuous updates and additions until finalizing the project.	Development of comprehensive assessment with a visual stakeholder map and legal review. See guidance below.
Community protocol process design and intra-community dynamics	Documenting during and reporting after the consolidation and internal approval or adoption of the community protocol.	Documenting in any form during the process, and development of final report to be shared with project partners before the symposium. See guidance below.
Use of community protocol for external engagements	If possible, after completing the first approved version of the community protocol and throughout all following engagements with external actors.[4]	Documenting in any form during the process, and development of final report to be shared with project partners before the symposium. Potential additions after the pilot phase, as relevant. See guidance below.

Table 1: Action Research Questions, key timing and reporting.

[4] It is difficult to determine whether the pilot case studies will have completed community protocols during the timeframe of the project. This does not prohibit the use of the community protocol process to support communities engaging with external actors.

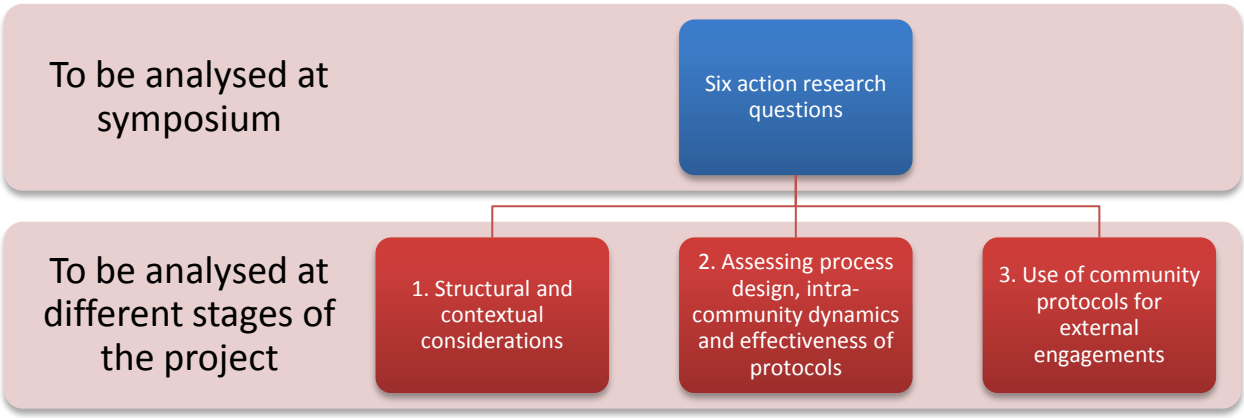
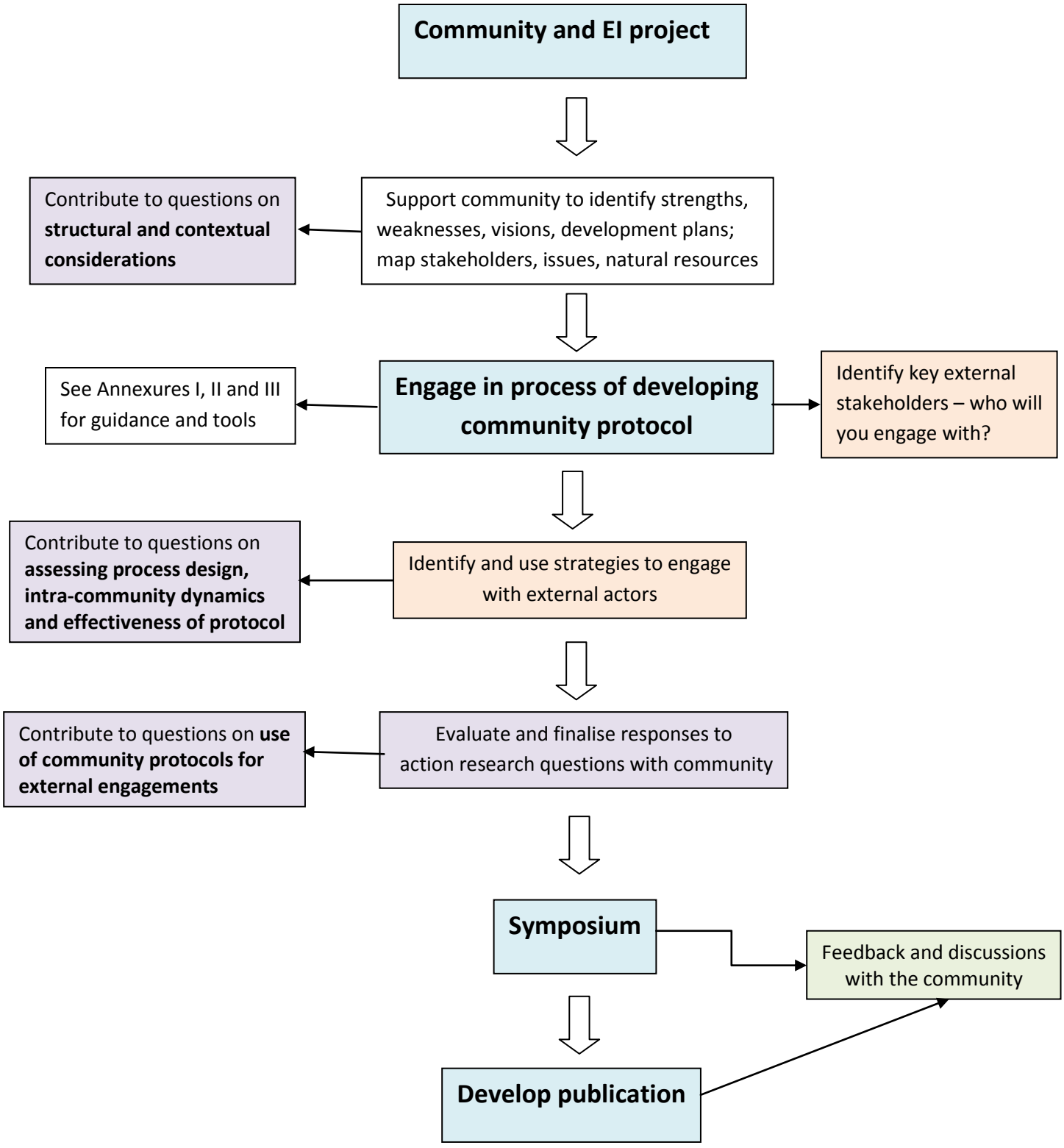


Figure 2: A breakdown of the analysis of Action Research Questions

The importance of similar guidance across the regions is to ensure that the following suggested action research questions are understood and addressed in the development of each community protocol. Separately addressing structural and contextual considerations and the role of external stakeholders in each region acknowledges that these factors have a significant effect on the potential effectiveness of community protocols in this particular sector.

Figure 3: A METHODOLOGICAL FRAMEWORK

Aim: To explore the development and use of biocultural community protocols to help secure community interests and rights in relation to extractive industries



ACTION RESEARCH GUIDANCE QUESTIONS

1. STRUCTURAL AND CONTEXTUAL CONSIDERATIONS

In order to explore good process design, to allow for a contextual analysis and to discern relevant lessons in the development of community protocols, it is important that the case studies participating in this pilot project systematically analyse structural and contextual considerations that affect and inform the community protocol process and the outcome of external interactions. It is essential to understand the broader legal, economic and political environment as well as the private and public stakeholders' structures involved, accountability and relevant economic, political and social dynamics.

A particular focus of this structural and contextual assessment rests on existing legal frameworks in order to provide a sufficient backdrop not only to relevant national laws, but also the functioning of the rule of law in each context and how it contributes to or hinders the potential effectiveness of a community protocol. It is strongly encouraged that each case study either engages in a legal review and/or updates existing legal reviews to address the breadth of considerations set out in the annexed guidelines in Annex IV.

An analysis of the roles, influences and actions of external actors in each context is extremely important when examining the effectiveness of community protocols as much depends on the nature of the relationship between the state and external actors generally, as well as the transparency within which the state engages in its operations. Understanding the industry and its economic realities is equally important. The same can be said for the history of a particular project as many community protocol processes do not begin in a vacuum but enter into an already ongoing interaction.

Finally, a comprehensive stakeholder mapping that takes account of all of the above considerations is essential.

These structural and contextual considerations can be best assessed in four distinct reviews, namely:

A. Legal review;
B. Structural industry review;
C. Project assessment; and
D. Stakeholder mapping.

All four reviews should ideally be conducted before the community protocol process begins, (or at the outset of this project, if a protocol process was underway beforehand), and should be updated and revised, as relevant, as additional information becomes available throughout the protocol process. Whilst the six action research questions do not specifically address the outcomes of the research in "Structural and Contextual Considerations", this background information is very relevant in assessing whether or not a community protocol process is useful *in particular contexts* and provides some useful insights prior to engagement with external actors.

A. Legal Review

Each pilot project case study is encouraged to engage in the legal review in Annex IV. The purpose of the legal review is to describe and analyse the national laws that support or hinder the rights of indigenous peoples and local communities in each country. Some countries have already engaged in such reviews (in whole or in part). Each country will be contacted separately about what will be needed for the purposes of the project. On the basis of the completed legal reviews, succinctly evaluate in no less than 5 pages, (in paragraphs and with supporting diagrams and/or tables) the existence and effectiveness of:

i. The country's international legal commitments;
ii. The rule of law (including independence of judiciaries and police force) in country or at a sub-regional level;
iii. The standing of government agencies (and its officials) and their role in the protection or undermining of the rights of communities, including conflicts or gaps between particular laws and policies;
iv. The role and treatment of civil society (including freedom of press, participation in decision-making processes, networks, etc.);
v. The principles governing land and resource rights in the country (or sub-regional levels), including provisions on customary title and on expropriation for public purposes.

At the community level, briefly assess:

vi. The legal status of the community under national law, i.e. has the community been recognized as indigenous or otherwise local, minority or marginalised community, and are customary governance structures formally recognized or otherwise acknowledged by governmental agencies?
vii. Whether the community holds formal title over the land concerned or are the community's rights over the land otherwise legally recognized?
viii. Whether the community has other recognized resources rights in the area concerned, such as cultural rights, rights to particular natural resources such as fishing grounds, and so on?
ix. Any ongoing processes as to recognizing the community's status or it's particular rights as recognised in international human rights and/or environmental law, for instance through the implementation of recent legal reforms?

At the industry level, provide a short overview of:

x. The applicable industry legislation such as mining acts and licenses, or government procurement legislation.

B. Structural Industry Review

In no less than 4 pages, (in paragraphs and with supporting diagrams and/or tables) , provide an overview of:

ii. The sub-soil resources that are extracted;

iii. The local, regional and global market for the resources and the country's importance in the regional and global market (either as an exporter, or shareholder);[5]
iv. How long the resources have been extracted?
v. Foreign and domestic ownership of the industry (in particular whether state-owned enterprises or large foreign investors are involved and the location of their country of establishment);
vi. The particular role of the company in question in the country (how much other investment does it hold? Is its investment of crucial or marginal importance to the government?)
vii. The main importers and the purpose of importation;
viii. Any processing industries in the country (refining, smelting, or concentrating);
ix. International arrangements for production or exportation control for the resources (such as the Organization of Petroleum Exporting Countries, OPEC);
x. The country's export control regime (in particular whether export restrictions are in place) and potential challenges with export control due to illegal trade;
xi. Any notable extraction licence arrangements (such as particularly low taxes and shares for foreign companies, links with previous privatization arrangements in the course of structural adjustment programmes, and so on);
xii. Local and national mechanisms to support transparency and accountability in the extractives sector.

At a broader level, please provide an overview of:

i. The role of local and foreign business and investment in the functioning of the state:
   a. How have local and foreign business and investment interests influenced government in its creation of laws and policies?
   b. How have local and foreign business and investment interests influenced the functioning of the state generally?
xiii. The state's approach to and interaction with local and foreign business and investment interests;
xiv. The transparency (or lack of) with respect to state, local and foreign business and investment interactions.

C. Project Assessment

For the project assessment, at the general level, it would be relevant to answer the following questions, in no less than 5 pages (in paragraphs and with supporting diagrams and/or tables):

i. When did the specific project start?
ii. At what stage is the project at (exploration, feasibility and planning, construction and operation)?
iii. If the project is part of a larger investment, have other parts already been implemented?
iv. Comment on whether the project is part of a transnational cooperation or if it is otherwise transnationally endorsed (this is particularly relevant for large-scale infrastructure projects such as road networks, pipelines, energy facilities)?

[5] It is expected that through the community protocol process, the community will become more aware through training of the importance of the extracted resource on the global market, the overall sustainability in extracting and using the resource and the community's role (if any) or the role of the particular mine, in the value chain.

v. In cases where the project is at an advanced stage, comment on any environmental, social and cultural impact assessments and any appropriate safeguards that have been developed to mitigate negative effects;
vi. If the project is at an advanced stage, has a community development agreement been formulated and adopted (this is particularly relevant for extractive industry projects)?
vii. Describe previous community[6] engagements with the investor as part of this project or similar projects, including:
    a. To what extent has the community been involved in company engagements and consultations with the general public?
    b. To what extent has the community been engaged in the development of impact assessments?
    c. Where community development agreements were adopted, describe community representation (have communities represented themselves? In what form?) and how the company responded to community requests;
    d. Describe community engagements, and comment on whether customary decision-making processes were respected;
    e. Comment on whether free, prior and informed consent was the standard for decision-making by the community in its engagements with respect to the project. What did this look like? If free, prior and informed consent was not the standard for decision making, describe the procedures in detail;
    f. Describe any community monitoring of the project. What were the results of this monitoring;
    g. Describe any community complaints with respect to the company and any responses by the company in reply. Comment on any formal complaints procedures in place, whether or not the community had cause to use these formal procedures and their effectiveness, if any.
viii. Describe similar projects within the community's vicinity (in particular where it relates to resource extraction);
ix. Describe any related activities by other actors ongoing or expected to begin for which the investor is not directly accountable, for example, illegal resource extraction.
x. Would an assessment of the economic viability of the extractives project be useful? This could include an assessment of whether the project at the local level is economical and sustainable, the likely costs on the environment and whether, on a larger scale, the resource is worthwhile extracting (for example, it is economically worthwhile to extract coal when it has such a hazardous and long-term impact on the environment on a larger scale).[7]

At the community level, where the issues have already been assessed prior to the community protocol process, consider the following issues before commencing with the community protocol process:

xi. What are the likely impacts of the project on the community's territories and resources?
xii. What are the expected impacts of the project on the community's spiritual, social and cultural life, including customary laws and decision-making processes?
xiii. What are the expected impacts of the project for the community's livelihoods?
xiv. What, if any, are the security concerns or concerns regarding serious violations of human rights by the investor?

[6] The "community" as formed for the purposes of the community protocol.
[7] This will be discussed with each pilot project individually during the project.

D. Stakeholder Mapping

For the stakeholder mapping, a comprehensive overview of different actors that have a role in the project and that could be relevant for the project's interaction with the community should be developed. This involves actors that are responsible for the planning and financing of the project, actors that are involved in the regulatory review and oversight of the project, and actors that are physically present on the project site, as direct implementers, local contractors or suppliers or as executive actors.

The stakeholder mapping exercise is likely to be an ongoing aspect of project as a result of increased involvement and information transfer with community members. However, where possible, an initial mapping should be developed prior to commencing the community protocol process. It will enable a proper assessment of the project risks and provide some object and purpose of the community protocol, and considerations such as with whom it could be used to engage. Ongoing stakeholder mapping may also be useful as a tool for basic monitoring of the development of the investment project itself.

Communities with their facilitators can decide in which ways it is most appropriate to sketch their maps. Some suggestions include a sketch map, a flow chart or written analysis. To develop a comprehensive stakeholder map, the following questions could be used as guidelines, though it will not always be possible to answer all questions:

i. What are the companies involved in the different aspects of the project?
ii. Who are the main shareholders in the investment?
iii. Identify any additional financial actors involved, particularly any international, regional and/or financial institutions;
iv. Identify any other possible stakeholders who may be affected by the outcomes of the dialogue, for example, business partners to the company in other sites or companies who depend on the supply of the resources to be sourced.
v. Where an investor acts through a subsidiary, what is the holding company and where is the latter's country of establishment?
vi. Identify any state-owned enterprises of the host country involved, or whether and how the government otherwise engages as a shareholder.
vii. If the land has been purchased or leased, who is the formal title-holder?
viii. Who are the main governmental regulators, and are numerous regulators involved?
ix. Where a project consists of numerous sub-projects, identify the different actors responsible for different segments of the project.
x. Who are the main local contractors such as building companies, local material suppliers, and so on?
xi. Where a project concerns the extraction of resources, who is the main importer or purchaser?
xii. Who comprises the local work force (if any) and are local workers organized in trade unions or other organizations?
xiii. If security forces are present, are they governmental, para-statal or private security firms?
xiv. Identify any other non-partner civil society organizations involved.

2. Assessing the Process Design, Intra-community Dynamics and Effectiveness of Community Protocols as a Legal Empowerment and Community Mobilisation Tool

In assessing whether community protocols *in particular* are useful tools in the context of extractive industries, it is important to analyse how each community protocol was developed within each community, how inclusive and community-owned the process was, and how effective the community protocol was in mobilising the community and in raising awareness of the relevant rights applicable to communities. Understanding the community protocol process, whilst different in each community, will provide some assistance in developing good practice of community protocols in the context of extractive industries.

This is extremely important in evaluating whether a community's development of a community protocol is a reliable method of inclusive community engagement around these projects. Each community and each process will be different, with particular community dynamics at play. Discussions will highlight how the community protocol process was or is being used to address internal dynamics and particular tools that facilitators and communities found useful to facilitate this and other elements of the community protocol process.

These guiding questions are divided into descriptive questions of the community protocol process, as well as overall evaluation. It is recommended that responses to each section, addressing each question, be no less than 5 pages each.

A. Description

Describe through writing, pictures and/or diagrams the following:

i. The community process, including the community team that drove it, timeframe, mile stones, major outcomes, and other notable aspects;
ii. The actors that were involved:
    a. Who was the "community" for the purposes of the community protocol and how did they define themselves?
    b. Identify, if any, groups within the community that were excluded during the community protocol process, either explicitly (and explain why) or incidentally (for example, as a result of cultural dynamics, lack of availability);
    c. Which community groups (youth, women, elders, disabled, etc.) were involved? Describe efforts to ensure the process was as inclusive as possible and any challenges that arose in this light;
    d. Was 'elite capture' an issue? If so, how was this issue addressed?
iii. What was the relationship between the protocol process and customary governance structures?
iv. Was the community protocol process the first time the community had engaged in formally documenting customary laws and practices? If so, how did the community engage in the process of documentation? How did the community deal with differing accounts of their local traditions? Do the customary rules set out take into account and appreciate the fluid, changing nature of customary laws and practices?

v. What was the scope of the community protocol process? Did the community limit the community protocol process to aspects that they considered immediately relevant for the investment project or did they address other issues as well?
vi. Were there any outcomes within the community that are not immediately observable in the physical outputs of the process, in particular:
    a. Was the process more inclusive than other community mobilisation processes that had previously taken place?
    b. Had there been any frictions within the community caused by the investment project, such as land disputes or conflicts regarding resources distribution that were addressed in some way by the process?
    c. Was there any type of internal mobilisation that had not taken place before?
vii. How was legal empowerment undertaken throughout the process?
viii. How did community members assert and communicate their resource and other rights?
ix. Which tools were used during the community protocol process, why were these chosen and by whom?
x. What physical material emerged from the process and who assumed responsibility for it (for instance, photographs, community sketch maps or 3-dimensional models)?

B. Evaluation

Unlike the description of the process, its evaluation will be very subjective and individual. The questions below, however, can be useful starting points for the assessment. When evaluating a process one should also bear in mind the action research questions. This part of the research and reporting together with the section that follows immediate below (on use of community protocol for external engagement) aiming to directly answer the research questions, as informed by the information gathered in the other assessments. The evaluation of the community protocol process and its internal effect are most relevant to answering action research questions 5 and 6, namely:

- How can community protocol processes support communities in addressing internal conflicts that arise in connection with extractive industries (such as exclusion or resource control disputes)? What elements are/were essential to address the issue in an endogenous manner?
- What are general "good practices" and methodologies of community protocol processes that apply in this context, irrespective of the status of an investment project, the actors involved and the nature of the communities' aspirations and expectations vis-à-vis the investment project?

In no less than 5 pages, in paragraphs and using diagrams or tables (if possible), set out considered answers to the following:

i. How effective has the community protocol been in general in comparison with different strategies already used by the community?
ii. How effective has the community protocol been with regards to community mobilisation and legal empowerment in comparison with different strategies already used in the community?
iii. Which tools were particularly useful?
iv. Describe any tools or resources that were not used but that could have been useful;
v. At what stage of the project was the community protocol developed? To what extent did this affect the community protocol's usefulness as a tool of engagement?

vi. How, if relevant, did external deadlines (such as requests by the investors or the government) affect the community protocol process (e.g. by interrupting the community's timeframe or by diverting attention from the community's goals)?
vii. If a community defined itself to incorporate a vast number of interested community members, did this in any way affect the effectiveness of the community protocol for the objectives that the community had identified?

3. Use of Community Protocols for External Engagement

In addition to the merit of community protocols as a community mobilisation and legal empowerment tool, this project aims to evaluate community protocols in the context of extractive industries as a tool for facilitating an interaction between affected communities and external actors such as the relevant private entities and the government. In line with this consideration, this third and last section of the guiding research questions aims at understanding the actual effect the community protocol processes had on this interaction. Action research questions 1-3 are the starting point for the following non-exhaustive- and situation-dependent, research questions:

A. How can community protocols support communities in directly negotiating with primary and secondary investors on impacts and benefits, and engage with other private actors involved in the project's operation (for example with local workers, contractors or security forces)?
B. How can community protocols support communities in engaging with the government?
C. How can community protocols support communities in engaging with other external actors such as neighbouring communities, supporting organisations/individuals, the broader public through media, public advocacy campaigns, and so on?
D. How can community protocols support communities in using redress mechanisms?
E. Describe general observations of community protocols as tools for external engagements.

This structure will be adopted for the research questions spelled out below. Please address these questions in no less than 5 pages per section.

A. Engaging with the Investors

i. How was the community protocol used to directly interact with the main investor(s) or a subsidiary?
ii. How was the community protocol used to engage with secondary private actors, such as on-site contractors or security forces?
iii. Were the engagements of an aspirational or of a defensive nature?
iv. At what stage of the community protocol process did the community decide to engage with private actors?
v. Describe the community engagement with private actors. For example, was the engagement part of a formal process such as an environmental impact assessment, a community consultation mandated under national law or the negotiation of a community development agreement?
vi. Alternatively, where the engagement was not part of a formal process, was the process initiated by the community and how successful was the engagement?

vii. If no formal negotiations or consultations took place, what were the reasons (lack of community initiative, objections by the investor, and so on)?
viii. What was the usefulness or shortcomings in engagements or negotiations of concrete strategies or demands set out in the community protocol?
ix. How did the external actors respond to any strategies or demands that were formulated?
x. What was the feedback from the investor(s) on the community protocol (for example, the usefulness of self-identification of the community, the information provided on customary governance structures or the expectations on free, prior and informed consent)?
xi. Describe, as best you can, the community's response to the outcomes to date and the role of the community protocol therein.

B. Engaging with the Government

i. Describe any direct interactions with any governmental bodies through use of the protocol;
ii. Which government bodies engaged with the community and its protocol (for example, government agencies responsible for community relations or agencies primarily responsible for the investment project or economic aspects)?
iii. Describe the nature of the community engagement. For example, was the engagement part of a formal process such as an environmental impact assessment or a community consultation mandated under national law?
iv. Were engagements between the government and community initiated by the community?
v. Did the engagement directly relate to the investment project or did it go beyond, for instance on the formal recognition of resource and/or land rights?
vi. Were the engagements of an aspirational or of a defensive nature?
vii. At what stage of the community protocol process did the community decide to engage with the government?
viii. If no formal negotiations or consultations took place, what were the reasons (for example, lack of community initiative, objections by the government)?
ix. What was the usefulness or shortcomings in engagements or negotiations of concrete strategies or demands set out in the community protocol?
x. How did the government respond to the demands that were formulated?
xi. Was there any formal recognition of the community protocol by the government? How so?
xii. Did the government ever attempt to engage in the community protocol process by formalizing it or otherwise limiting community ownership of the process? If so, how so?

C. Engaging with other External Actors

i. How has the community protocol been used to directly interact with other external actors such as neighbouring communities, supporting organisations/individuals and the broader public?
ii. Were the engagements of an aspirational or of a defensive nature?
iii. At what stage of the community protocol process did the community decide to engage with any other external actor?
iv. Describe the community engagement with the other external actors.

D. Using Redress Mechanisms

i. Which, if any, international, regional, national or investor-specific redress mechanisms have the community used? Was the protocol developed to support this strategy, or was it an alternative strategy?
ii. What, if any, particular documentation was collated as part of the community protocol process that was useful in engaging with redress mechanisms?
iii. Describe any redress mechanisms that had been engaged with before the community protocol process;
iv. If no redress mechanisms were approached, what was/were the reasons?

E. General Observations on Community Protocols as Tools for Engagement

i. Overall, describe the usefulness of a community protocol as a tool to aid communities in direct interactions with external actors;
ii. Identify any elements of the community protocols that were particularly useful;
iii. How was timing, both of the community protocol and the investment project, a relevant factor?
iv. Where a community protocol outlined a concrete strategy including concrete demands, what are the lessons regarding essential elements or best tools in developing a successful strategy?
v. Where a community protocol did not outline strategies or demands, how was it useful in facilitating external engagements?
vi. What stages in an investment project cycle was the development of a community protocol useful or not useful?
vii. Did the development and use of a community protocol slow or stop an extractives industry project? If so, how?
viii. If a broad community protocol was developed, how did this facilitate or hinder community interaction with external actors?
ix. Describe the usefulness of legal or other forms of empowerment processes to the community in interaction with external actors;
x. What were the types of conflicts (such as serious security concerns of serious violations of human rights) where a community protocol was not useful for external engagement, or potentially even aggravating the situations? Why was this so and how could this be prevented?

ANNEX I

DEVELOPING AND USING COMMUNITY PROTOCOLS

1. WHY ARE COMMUNITY PROTOCOLS BEING DEVELOPED?

Community protocols are by no means new phenomena. Communities' customary rules and procedures regulating conduct and interactions between themselves and outsiders have often been referred to as protocols. They form an important part of customary law and are codified in many different ways such as oral traditions and folklore, dances, carvings, and designs. Over the past several decades, as communities increasingly engage with external actors, interactions have often been shaped by outsiders and implemented in a top-down approach that disregards traditional laws. As a result, there is growing recognition of the potential usefulness of articulating communities' protocols in forms that can be understood by others. Non-governmental and community-based organizations are often asked to facilitate such processes, though by definition, the development remains community-driven and free of external intervention and influence.

Community protocols, as described in Part I.1 above, have been developed for many purposes. Given the preparation of a community protocol is an internal process, the community decides what information to include, how best to gather the information, and what form the community protocol will take. If one of the purposes of the community protocol is to mobilise internally around external threats, it could be in a form commonly used by community members to convey information, such as a song, poem, or other method. In other instances, protocols have been developed to better enable external actors to ascertain how to interact with the community in a way that respects the community's customary laws and thereby national, regional and international laws. Often, if the community protocol is being prepared to provide information to external actors, the output will be in written form with supporting multimedia materials, but that decision is entirely up to the community.

Today, community protocols have been developed around the world by many different communities to address a variety of different challenges. In Bushbuckridge, South Africa, for example, a community of traditional health practitioners developed a protocol that has been used to openly communicate with a government agency controlling access to a protected area, which has led to increased access to plants in previously off-limit areas. In Kenya, the process of developing a community protocol has brought together over 35 community organizations in response to a massive development project seeking to link oil in South Sudan with a new port on the Kenyan coast. And in Honduras, a geographically widespread Indigenous community developed a protocol to inform external actors of how to properly respect the community's right to provide or withhold free, prior and informed consent in the context of a development process. Many other communities in Latin America, Asia, and Africa have also developed protocols to address similar issues.[8]

[8] For further information, please see www.community-protocols.org. In addition, please refer to Natural Justice's blog (http://natural-justice.blogspot.com/) for more information on our ongoing work in each region, and the "Library" section on Natural Justice's webpage (www.naturaljustice.org) for further information on past work in each region.

2. COMMON ELEMENTS IN COMMUNITY PROTOCOLS

While the scope and form of a community protocol is entirely shaped by the community, it is possible to identify a number of common elements and characteristics of the process and outcome.

Oftentimes community protocol processes address one or more of the following elements:

- The community's identity, story of origin, and core values and norms
- Relationships between culture, language, spirituality, customary laws, resource use practices, traditional knowledge, and their territories and areas
- Customary institutions, decision-making processes, community-entry procedures and other aspects of self-governance
- Challenges and concerns and how the community would dare prefer to address them
- Locally defined development plans and priorities
- Specific rights and responsibilities In customary, national and international law
- Specific calls to actors

Box 1. Common elements in community protocols

In so doing, the process may be aspirational, defensive or both.

Aspirational: Where the community feels that external actions will bring opportunities (for instance, through employment or development of desired infrastructure), communities may unite to set out the ways they wish to engage with external actors, their rights to equitable sharing of benefits, their development priorities, and so on, to ensure it is done on their terms.
Defensive: Where a community thinks that an external action is detrimental to their territories and resources, wellbeing and ways of life, or they are not being consulted with respect to a project, a community protocol may be used to defend their rights and to oppose the project, or to assert their rights with respect to consultation, consent, and other such procedural aspects.

Box 2. Aspirational and defensive community protocol processes

There are numerous tips and guides available to facilitators and communities to help structure and facilitate a community protocol process. Typically, however, the process should first begin with internal discussions within the community as to whether or not a community protocol is needed and then whether they wish to develop a community protocol. If they decide to undertake a protocol process, next steps often include the following (among others, and not necessarily in this order): initial self-identification to determine who shall be included in the process; identification and training of a core group of community facilitators or researchers; participatory documentation of various kinds of information; a series of workshops to process information and develop joint understandings; and a number of meetings with the broader community for interim review and verification. The process may also include a legal empowerment process and, if appropriate, an introduction of the community protocol itself to the external actors as a means of using it for external dialogue. These different steps are shown in the figure below. It is important to emphasise that the community protocol process is not bound by a particular order and may omit certain stages, repeat others, and include additional ones; it is determined by the community. The figure is thus only exemplary.

Figure 4: Possible stages in a community protocol process

3. GUIDING PRINCIPLES FOR FACILITATORS

To fully respect the nature and purpose of a community protocol as a community-driven process, it is of vital importance that all facilitators, including those from within and outside of the community, understand the following guiding principles that encompass the spirit of good process. These are suggested for all facilitators involved in the pilot community protocols for this project. They have been developed on the basis of the experience of Natural Justice and its partners over a number of years, and will continue to be developed in light of new experiences and lessons learned, including in this project itself.

The development of a *bona fide* biocultural community protocol …
… is a community endeavour that:

- **Is endogenous**
- **Is empowering**
- **Is based on communities' values and procedures, while including the fullest and most effective participation of community members**
- **Promotes intra- and inter community dialogue, and intergenerational discussions**
- **Fosters consideration of the inter-linkages between social, economic and spiritual wellbeing**
- **Explores the diversity of knowledge and skills in the community**
- **Draws on the communities' own resources and resilience**
- **Further develops community collaboration on useful methodologies**

… and focuses on and integrates:

- **The values and customs relating to their collective biocultural heritage**
- **Current strengths, challenges and future plans**

- **Their rights at the international and national levels that support their ways of life and their corresponding duties**
- **Messages to specific agencies about how they intend to …**

… to produce a protocol that is:

- **Value laden**
- **Presented in a form that is most appropriate for the community while effectively communicating their key points to the relevant authorities / bodies …**

… towards:

- **Establishing the community's/ies' rights and duties relating to their stewardship of their collective biocultural heritage**
- **Respect for and realization of procedural and substantive rights and responsibilities**
- **Increasing their agency**
- **Improving access to information, participation and/or justice**
- **Improving dialogue with other communities or outside agencies**
- **Further developing flexibility and adaptability**
- **Promoting local social, environmental and economic equity …**

… and where outsiders assist a community with any aspects of developing a protocol, they should engage the community with:

- **Honesty**
- **Integrity**
- **Transparency**
- **Respect**
- **Social and cultural sensitivity to local processes and timeframes.**

Box 3: Guiding principles in a community protocol process.

In addition, facilitators should aim at promoting an inclusive development process that takes into account the views of women, elderly, youth, and other community members who may not have a strong voice within community decision-making processes. As a community protocol is as much (if not more) about process as it is about the outcome, it can be used to foster communication and the sharing of ideas and experiences that will help to strengthen social mobilisation. However, inclusivity should not be enforced as an external requirement; it must be supported from within. Facilitators should be aware of particular community dynamics to support broader inclusion, and not further cement existing internal tensions or divisions and further marginalising less-empowered groups.

Facilitators should furthermore encourage internal selection of community members who will be responsible for moving the community protocol process forward, preferably through some processes that allow for less empowered groups such as young people and women to also be involved. Facilitators who understand how to support communities in holding meetings and gathering information can be a valuable part of the process.

Moreover, the community should determine the degree of involvement of external facilitators. Sometimes, communities develop protocols with little or no involvement from external facilitators beyond initial explanations of the purpose of community protocols and how they are generally developed. In other situations, facilitators have attended several community meetings and provided guidance and training on relevant international laws that can be included in the community protocol.

4. How are Community Protocols developed?

Facilitating a Community Protocol Process

Facilitation of a community protocol process requires skill, sensitivity, patience, flexibility, and willingness to learn and adapt to changing conditions. There are a number of key characteristics of a good facilitator. A facilitator should:

- *Be an active listener*
- *Play a supporting role*
- *Respect the local culture and traditions*
- *Maintain an atmosphere of respect and openness*
- *Foster trust and confidence*
- *Be consistent and clear*
- *Remain neutral and level-headed*
- *Keep up positive momentum*
- *Take notice of subtle changes in energy and tone*
- *Develop positive rapport with a range of community members*
- *Keep the broader objectives in mind and help focus discussion on key issues*

Box 4: Key qualities of a facilitator in the community protocol process

Before beginning the documentation process, it is useful to reflect upon the following questions with other community facilitators, catalysts, and leaders:

- *What is the purpose of the protocol? Who is it directed towards?*
- *How will you decide which issues to discuss and in what order?*
- *How will you facilitate these discussions in culturally appropriate and engaging ways? Every person responds differently to learning and communication styles such as visual images, listening, and movement. Facilitation methods should be diverse and participatory.*
- *How will you document these discussions and supporting evidence (such as the location of resources or impacts of customary practices)?*
- *How will you consolidate the documentation into a protocol? Who should be involved?*
- *What format will the protocol take (for example, a written document, videos, photographs, and maps)? What technical capacities are required? Which language(s) will be used?*

Box 5: Key reflective questions before documenting a community protocol

When facilitating community discussions about the sub-sections below, consider using the following overarching questions as the foundation:

- *What resources, assets, systems, etc. do we currently have?*
- *What did we have in the past that we would like to revive or revitalize?*
- *What do we envision for our future?*
- *What are the internal and external challenges, opportunities, and potential sources of support?*
- *How are cultural sources of information (such as customary laws, traditions, values, and knowledge) tracked, recorded, shared, and passed on within the community? How has this changed over time?*
- *How could the information be shared with or communicated to someone outside of the community?*
- *What specific aspects would you like to convey to outsiders through the community protocol?*
- *How will you communicate the information? Examples may include maps, illustrations, written documents, photographs, or videos.*

Box 6: Key reflective questions before documenting a community protocol

Facilitating a Workshop or Meeting

Workshops and community meetings are common methods of facilitating a community protocol process. It is the facilitator's responsibility to create the conditions for a productive and impartial process. Before the workshop or meeting, certain arrangements should be made in consultation with the local leadership and whoever is promoting the idea of a community protocol. There are also certain tasks and roles to fulfil during the workshop or meeting (see the tables below).

Task	Details
Draft an agenda	This should be done through consultations with the community in advance.
Identify key discussion points	Discussions need to be focused and contained to key issues. It could involve a process of brainstorming and prioritization from a comprehensive list of topics. Try to find out if there are some topics that people think are important but are unwilling or unable to discuss openly and explore how else they could be considered.
Draft a list of participants to be invited	Who should be invited to participate will depend on the objective and agenda of the particular workshop and if you plan to hold additional ones at another time. It should also be done in consultation with all groups in the community to ensure adequate representation.
Secure logistics and materials	This includes considerations such as location, layout of the space or room, availability of space for small groups or breakaway discussions, reliable electricity source and data projection equipment (if required), pens or markers, paper, flip charts, recording equipment, food and refreshments, restroom facilities, and child care.
Arrange for translation	Accommodate languages that participants prefer to speak, including in written materials. If many languages need to be used, participants could work in smaller groups and later report back with translation assistance. Translation can take a long time, so consider this when planning timing and length of the workshop.

Table 2: Arrangements to be made before a workshop or meeting

The role of the facilitator during the community protocol process is varied. Tasks that the facilitator should undertake as part of his/her role should include:

Task	Details
Set the ground rules	This is an essential step that establishes the authority of the facilitator and demonstrates respect for all participants. 'Ground rules' can be created both by the facilitator and the community members and may include: no interruptions while a person is talking; taking only the necessary length of time to speak; respect for others' opinions; facilitator has authority to suspend discussion if there is a deadlock in order to agree on a procedure for resolution.
Create space for trust and sharing	Gaining the trust of participants can be more challenging in a multi-stakeholder setting, for example, with community members, highly educated bureaucrats, and NGO personnel. Try to ensure the dynamic is balanced by inviting the community to set the level of the conversation.
Be an active listener	This is the most important role of a facilitator. It requires insight into group dynamics. In a particularly heated discussion, it also requires skill and confidence to intervene or shift the focus to build on earlier consensus.
Be creative	Draw from the community's culture and forms of communication and sharing. For example, begin with a traditional song or blessing. Make use of engaging activities, working groups, and breakaway sessions as much as possible. Plenary discussions should be limited to presentations and reporting back sessions. Consider using more than one facilitator, especially in large groups.
Follow the agenda	At the beginning, seek agreement from the participants on the agenda and stick to it. If changes are desired, discuss and agree upon them as a group.
Keep time	Unless the meeting is intended to be completely open-ended and flexible, manage the agenda time slots carefully. Any deviation should be discussed beforehand and practical arrangements made to ensure that all necessary topics are addressed. Community members are busy and their time should not be taken for granted.
Keep a record of discussions	Plenary discussion should be recorded as a series of decisions linked to the agenda rather than verbatim. Working group discussions and outcomes should be captured and circulated or presented during the workshop (for example, using a rapporteur from each group). Workshop reports require considerable effort and skill if they are to capture an authentic record of the creativity and consensus that can emerge, but much depends upon the structure and flow of proceedings.

Table 3: The role of the facilitator during a workshop or meeting

Supporting Community Catalysts

In addition to the primary facilitator, external facilitators will require the support of other community members who demonstrate certain qualities such as leadership, sense of commitment for the greater good, reliability, self-initiative, ability to work independently and in teams, open-mindedness, flexibility, and willingness to learn (see the box below for a checklist). These individuals could be considered 'community catalysts' or people who have the potential to inspire and create significant change. Although they may not necessarily serve as official representatives of the community, there are

countless different roles that they could play, including facilitating workshops, presenting at local schools, contacting the media, and organizing a delegation to visit the local government official. They should be comfortable with taking responsibility for a certain part of the process and reporting back to others involved, including yourself and the community leaders.

Many community catalysts will become obvious through discussions and meetings, although they won't always be the most outspoken or vocal people. Community leaders can also help identify them, including through one-on-one discussions with the facilitator. If possible, they should be identified from diverse groups such as women, youth, and elders and not only from the families of local leaders or elites. Some may need guidance or encouragement to realize their potential. Regardless of when they join, openly discuss the process to ensure clarity of roles, responsibilities, and expectations. As facilitator of the community protocol process, be aware that potential community catalysts may have, and pursue their own agendas (in terms of future political aspirations, with respect to status within the community as knowledge-holders etc.). This is not necessarily positive or negative – but it is important to be mindful of, as differing agendas can potentially skew community dynamics depending on who is chosen as a community catalyst.

- *Who is or has the potential to be a community catalyst?*
- *What skills, resources, and assets do they already have?*
- *What skills, resources, and assets would they like to learn or gain?*
- *What role would they most like to play in the protocol process?*
- *How could the broader community support them?*
- *What types of external input could assist?*

Box 7: Key questions for discussion to help identify community catalysts

Seeking Agreement on the Process

Drawing on the guidance above, ensure the facilitator's role and the overall protocol process are clear to the community at the outset. As emphasised above, the process should be driven by and for the community, with you as the facilitator. Even if there is a considerable amount of organization and resources being invested, it is still the community's protocol and they need to have ownership over the process and outcomes. Second, ensure clarity on roles and responsibilities for various tasks, including documenting and consolidating the protocol. If certain community members or catalysts commit to key roles, it will become an initiative of the broader community, distinct from and larger than your role as facilitator. This is crucial for the sustainability of the effectiveness of the protocol for the future. Further considerations are provided in Box 8 below.

- Seek permission from the local government structure or traditional authority to hold consultative meetings.
- Use appropriate media to accommodate the local literacy levels. Use community halls, schools, clinics, and churches or places of worship to distribute information and hold meetings.
- Be consistent with the information you provide. If you don't know an answer, be honest and offer to find out more.
- Consult as widely as possibly within the community. This could include holding meetings with specific groups such as married women, youth, and male elders.
- Seek insights from CBOs, NGOs, and any other actors working with the community.
- Work with an initial group to outline and discuss a process for undertaking a protocol and rules of engagement.

Box 8: Suggestions for seeking community agreement about the details of a protocol process

Tools

A wide variety of participatory methods can be used to guide any step of the community protocol development process. For instance, a community may decide to use meetings, brainstorming, group discussions, various types of mapping and illustrations, assessment tools, audio/video and/or semi-structured interviews, role plays, and locally appropriate monitoring. Based on the outcomes of these participatory methods, community members can then prioritize issues, clarify messages to external actors, and consolidate the information into an appropriate format. Depending on the purpose and whom it is directed towards, the protocol could consist of, for example, a written document, digital or 3-dimensional maps, films, photographs, and theatre performances. Whatever format is used, it is important that it is meaningful to the community and should instil a sense of pride and ownership over the process and outcome.

A comprehensive list and detailed descriptions of tools available is detailed in Natural Justice's Biocultural Community Protocols: A Toolkit for Community Facilitators. However, some guidance as to particular tools that you may wish to use to guide certain processes and to elicit information for particular sections can be found in Annex III.

5. Using a Community Protocol

Community protocols are formulated not only as an internal tool for communities to mobilise around and engage, but also for communities to document and articulate their own terms, rules, values, and priorities for engagement and as a platform to engage in constructive dialogue and action with external actors.

There are a number of different ways a community protocol can be used by communities to engage with external actors (including government, investors, NGOs, and so on), within and between communities and in general advocacy strategies. The following sections outline different ways that community protocols have been or can be used. Note that it often takes time for a community to finalise its protocol. Accordingly, processes that are part of the development of the protocol are often also useful and/or utilised to advocate or engage with external actors. This is considered "using the community protocol". So, when describing how a community protocol can be used, this speaks as much to the processes underpinning it, not just how a community protocol document itself can be useful.

Figure 5: Various possible uses of a community protocol

Engaging with External Actors

There are a number of ways communities can use their community protocol (or community protocol process) to engage with external actors. Note that communities do not need to have finalised their protocol in order to engage with any external actors. However, the processes they have undertaken while developing their protocols can inform and strengthen their engagement with outsiders.

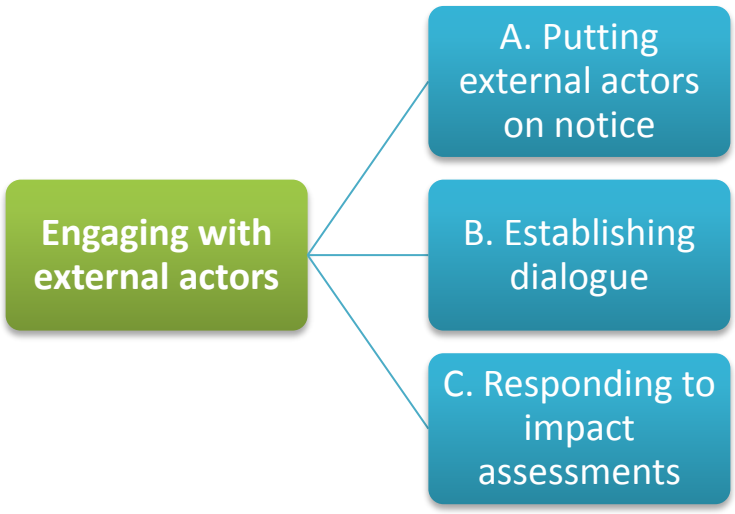


Figure 6: Potential uses of community protocols when engaging with external actors

A. Putting External Actors on Notice

One aspect of engaging with external actors is known as "putting them on notice", which often entails setting out the rights that are applicable to the particular community, notifying them of the process or existence of the community protocol and/or setting out the issues that a community is experiencing with respect to a project. This means informing external actors proactively that your community has developed or is developing a protocol, that you are aware of your rights (and their obligations) under national, regional, and international law, and/or that you are setting out specific recommendations or requests to which they need to respond or procedures to which they need to adhere. Putting key external actors on notice can be useful because it informs them proactively of your intentions and expectations, which can spur positive action and help prevent conflict. It can also encourage accountability and transparency of key actors in the public and private sector whose actions or inactions are affecting your community and territory. It can encourage external actors to familiarise or revisit their obligations with respect to your community in national, regional and international law and minimum voluntary standards.

There are a number of different ways to put key actors on notice. Two suggestions are listed below that could be adapted to your local context and strategy.

- *Send a letter by post, email, or fax to inform them about the community's protocol*

The letter should be clear and concise to attract the attention of the reader and written in an introductory and open manner to encourage a positive response. It could include information such as a brief introduction to your community and where you are from; key issues that you are facing that are of direct relevance to the agency, organization, or individual; how you would like them to respond; and contact details of the relevant community authority or liaison. You may wish to append a copy of the protocol (if available) and ask to arrange a meeting to discuss further in person or over the telephone.

- *Arrange a meeting to deliver the community protocol and discuss it in person*

Depending on the situation, it may be more effective for a small rather than large number of people to meet directly with the relevant agency, organization, or individual to discuss the protocol. If a crowd arrives to deliver the protocol, particularly if there is a negative or potentially hostile atmosphere, it is more likely that the people with whom you are trying to meet will feel defensive and unwilling to discuss the issues openly. It is important to begin the process of using the protocol in a positive and constructive manner. The community should take the time to consider how to best put external actors on notice within your local context and using appropriate modes of communication.

B. Establishing Dialogue

Often communities and external actors (such as investors and companies) come from different worldviews when they begin to engage with each other. Companies' understanding of the way communities engage with external actors (for instance, on the basis of their customary laws) is key for future interaction. Similarly, communities are better placed when they understand the nature of extractive industries and their integrated rights in this context. The development of community protocols can assist in catalysing constructive dialogue and collaboration between communities and external actors. Dialogue (as opposed to negotiations) can be relatively informal and unstructured and often occur before formal negotiations take place. They can be used to share information, establish a mutual understanding of different perspectives, and seek innovative ways to address a common concern or fulfil a shared vision. They can be useful to bridge very different worldviews and to create a more

level “playing field” by providing space for communities to initiate the terms for engagement. Dialogue is more likely to succeed if those involved approach it with a positive attitude and optimism in the potential of collaboration.

Dialogue can take the form of one meeting or an ongoing series of interactions through a range of different media. The number, length and form will depend on the community’s goals or aims for dialogue. Dialogue can significantly influence how communities are perceived and treated by external actors. The box below outlines key considerations that communities may wish to discuss before and during the process. If the dialogue turns into a negotiation process toward a binding agreement, please refer to the section below entitled “Negotiating with External Actors”.

Dialogues between community and external actors could involve the following elements:

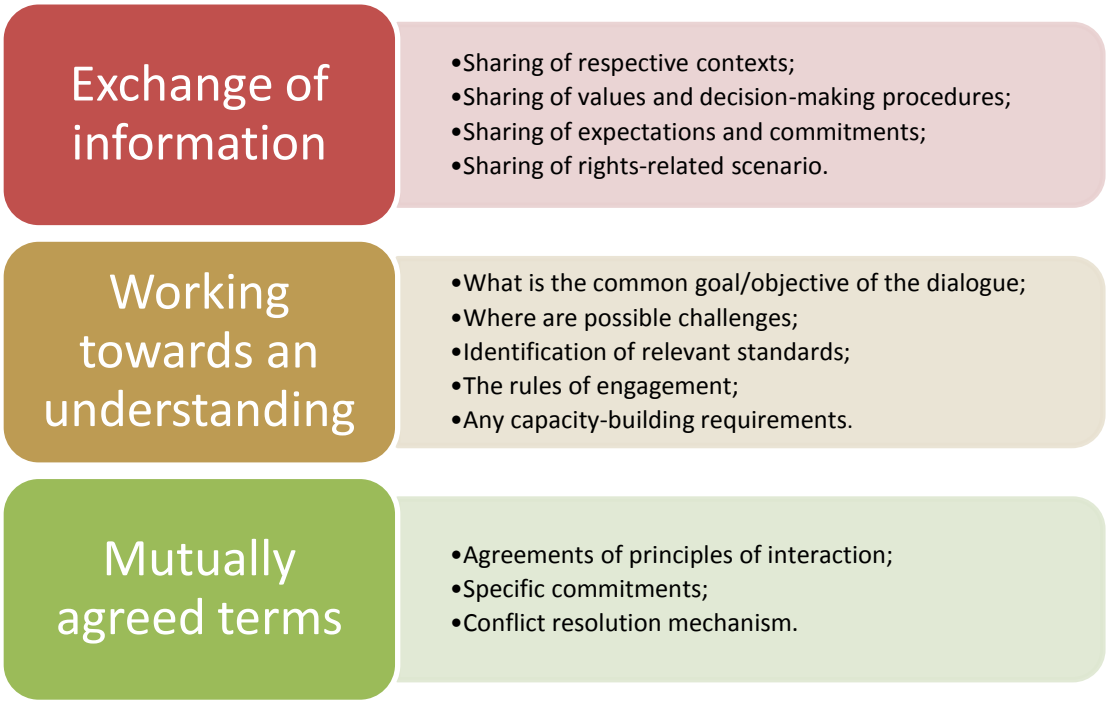


Figure 7: Potential elements of a dialogue

Dialogue may not be suitable for a particular community, depending on past relations with external actors such as government officials, researchers, and companies. If communities are sceptical of engaging with such actors, then they are less likely to have successful dialogues. Similarly, if external actors are apprehensive about meeting and engaging with communities, this may indirectly limit opportunities for communities to achieve local visions and goals. These challenges are all too common and likely to increase with growing demand for scarce resources and lands. It is ultimately up to the community to decide whether and how they wish to engage with each external actor that affects their lives and territories or areas.

The following are some questions that communities may like to consider when thinking about whether or not to engage in dialogues with external actors:

- *What external actors would you like to approach to engage in dialogue?*
- *What are their interests and personal or institutional agendas?*
- *What are our ultimate goals or aims that we would like to achieve through dialogue? Will dialogue achieve these goals or aims?*
- *What are our specific expectations towards the external actor?*
- *What are the key issues or plans that the community would like to discuss?*
- *What would be the most effective way to share your views? What are the advantages and disadvantages of different forms of communication (for example, PowerPoint presentations, films, slideshows, and prepared questions)?*
- *How should you change your approach differently for each specific actor?*
- *How long do you expect or would you like the dialogue process to take?*
- *Where should you have the dialogue? Will your community's participation be limited if the dialogue is held outside of the community?*
- *Who will participate on behalf of the community? How will the rest of the community provide input and feedback?*
- *How can we encourage an overall positive atmosphere and attitude that allows for creativity and innovation?*

Box 9: Guiding questions for discussion

C. Responding to Impact Assessments

One of the main ways for communities to engage with external actors and participate in decision-making processes that are likely to affect them is through impact assessments. Impact assessments are intended to evaluate the potential impacts of a proposed extractives project on a range of stakeholders and factors, including nearby communities and the environment. They also provide recommendations to the project proponent as to whether or not the project should be implemented and, if so, ways to prevent and mitigate the likely impacts. Impact assessments are sometimes incomplete, and do not assess the construction of infrastructure related to the extractives project (such as the construction of roads, buildings, housing for employee etc.) and the associated impacts.

Figure 8: Types of Impact Assessments

There are several different kinds of impact assessments (see Figure 9), the most common of which are environmental impact assessments. Some companies and research institutions also have well-established policies and procedures for conducting environmental and social impact assessments. Cultural and wellbeing impact assessments are not often used by project proponents, but should be advocated for or undertaken by communities themselves, given the interconnectedness of impacts on a community.

It is often difficult for communities to participate effectively in these processes. This is for a variety of reasons, including:

- Assessments are often conducted by professional consultants hired by the project proponents and supporters, which are usually government agencies and companies;
- Assessments tend to use Western scientific methods, sophisticated technology, complicated forms of analysis and technical language;
- Limited timeframes are given to provide comments on assessments that are usually several hundred pages long and not provided in the language of the community likely to be affected;
- Assessments often don't consider social and cultural impacts of a project (including the customary laws, languages and uses of land and natural resources by communities);and
- If the consultants are hired by the same agency or company that is proposing the project, it is likely that the impact assessment will be biased and not fully representative of communities' concerns.

As a response to these issues, some communities proactively develop and conduct their own impact assessments and attempt to engage with project proponents in multi-stakeholder dialogues and negotiations. The advantage of doing so is that it challenges the accuracy of impact assessments with a community's own factual evidence. Community protocols can add to this evidence in various ways, for example: by contesting the legality of an assessment based on a lack of adequate participation (with reference to the protocol's requirements for participation, consultation and/or free, prior and informed consent); by using community protocol processes such as the Community Health Impact Assessment Tool (see Annex III for more information) to dispute outcomes set out in the impact assessment, mapping to highlight the integrated impacts that a project is likely to have on an ecosystem or community visioning and development plans to put forward their own plans and hopes for development; and by mobilising communities to respond directly and/or seek guidance from experts.

When deciding to engage with an external impact assessment or to develop their own impact assessment, a community could consider questions such as the following:

- *What is the proposed project and who are the proponents?*
- *How much do you know about the project and its proponents and what further information do you need? How can you find out more information?*
- *How would the community prefer to be notified about the project and any impact assessments?*
- *How would your community and others in the area identify yourselves and your territories, areas, or resources that are likely to be affected?*
- *What mechanisms are proposed for the impact assessments and other forms of consultations? How can your community participate in the design and implementation of these mechanisms?*
- *How will the proposed project and assessments respect the community's rights to self-determination, self-governance and free, prior, and informed consent?*
- *To what degree does the proposed project and assessment undermine or accord with the community's protocol and customary laws?*
- *What resources, support and capacity building are available to ensure community participation?*
- *How will sensitive information such as traditional and local knowledge and the location of sacred sites be protected on behalf of the community? Who will have control over this information?*
- *How will the outcomes of the assessment be reviewed and disseminated?*
- *What is the proposed review and appeal process?*
- *If the project goes ahead, what will be the monitoring, contingency, and conflict resolution plans?*
- *Who will be responsible for issues relating to liability, redress, insurance, and compensation?*

Box 10: Guiding questions for discussion when faced with an impact assessment for a proposed project

Communities are often given only a short period of time to respond to voluminous documents that are usually highly technical in nature and not in their first language. Responses from environmental and other experts may thus be useful supplements to the community's concerns with a particular project. Communities often use the support of organisations and resources in their country or region (such as the Southern African Institute for Environmental Assessment). Some other resources that might be helpful include:

Key Resources on Public Participation in Environmental Assessment Processes
A One-Stop Participation Guide: A Handbook for Public Participation in Environmental Assessment in Southern Africa (SAIEA, 2004)
Guidebook for Evaluating Mining Project EIAs (ELAW, 2010)

Negotiating with External Actors

A negotiation is a discussion or dialogue that is aimed towards reaching an agreement. In the context of extractive industries and other investment projects, if a community provides free, prior and informed consent to a project, there are a number of different occasions whereby a negotiation will be necessary, for example:

- Setting out terms and conditions to adhere to when entering into and engaging with the community;
- Deciding where a project or activity can or cannot take place;
- Agreeing on monetary and non-monetary costs and benefits to be shared; and
- Amending agreements if there is a change in a project or activity that is likely to impact the community or their territory.

Although much can be gained through negotiation processes, communities are generally at a disadvantage due to significant power imbalances. Be particularly careful about with whom and why you are entering into negotiations. Take the time to find out information about the other parties involved and to consider your community's priorities and aims before agreeing to negotiate. Ideally, a community protocol can be useful in the preparation for negotiations because it can articulate the terms within which communities wish to engage (for example, who will negotiate on behalf of the community, and any intermediate decision-making processes within the community that need to take place periodically throughout the negotiation) and it can help to mobilise and prepare the community to articulate their negotiable and non-negotiable demands in preparation. In addition, the processing of learning and engaging with their rights can enable communities to negotiate within the bounds of the law, for example, refusing to agree to unlawful terms of a negotiation.

Some questions that may be of assistance in thinking through a negotiation process include:

- *Who is involved in the negotiation process?*
- *What are the other parties' interests, priorities, rights, and responsibilities?*
- *What information do we need before entering into a negotiation?*
- *What is the other parties' timeframe for negotiating and making a decision? What is the community's timeframe for negotiating and making a decision?*
- *What language will be used? Do we have access to adequate translation services if needed?*
- *What are my community's rights and responsibilities?*
- *Who will represent us? How will the rest of the community provide input and feedback?*
- *Can we use the assistance of others during the negotiation process?*
- *What outcomes would we like from the negotiation?*
- *What are our 'non-negotiables' or 'bottom-lines'?*
- *How would we handle a breakdown in negotiations or a drastic shift away from our priorities?*
- *Do we have access to legal support if necessary?*
- *Do we have sufficient commitment within the community to see the process through?*

Box 11: Guiding questions for discussion

Key Resources on Negotiating with External Actors
Negotiation and Mediation Techniques for Natural Resource Management (FAO, 2005)
The ABC's of Negotiation: An Advocate's Guide to Negotiating with Providers to Improve Access to Health Care Services (Community Catalyst, Inc., 2004)
Skills Development and Conflict Transformation: A Training Manual on Understanding Conflict, Negotiation and Mediation (UNDESA/UNDP and The Centre for Conflict Resolution)
IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements (Gibson, O'Faircheallaigh, and the Gordon Foundation, 2010)

A. Free, Prior and Informed Consent

An important aspect of both dialogue and negotiation is the ability for parties to say "no" to an offer put on the table. Free, prior and informed consent (FPIC) is an ongoing process whereby at any stage of a negotiation, mediation or dialogue, a community has a right to seek more information, say "no", or withdraw entirely. It is recognised as a minimum standard in international law. Each aspect is briefly defined:

"Free" is freedom from force, intimidation, manipulation, or pressure by external actors (government, company, middlemen, and so on).
"Prior" refers to having the ability to make a decision on a project or activity before the government allocates the land or natural resource for a particular use, before an investor conducts its activities and before any change in a project plan that is likely to impact upon the community.
"Informed" means that communities must be given all the relevant information in order to make a proper decision about whether to agree to the project or not. This also means the information must be independently obtained and in a language that a community can understand, and the community must have access to experts on law and technical issues if they so request.
"Consent" means that the communities involved have the right to say "Yes" or "No" to the project as a whole and at each stage of the project according to the institutions and decision-making process of the community's choice.

Box 12: Free, prior and informed consent defined (adapted from Guide to Free, Prior and Informed Consent, Oxfam 2010).

Communities should not feel pressured or obliged to enter into or continue negotiations if the community does not want to. The onus is on the project proponent to provide as much information as needed for the community to feel 'fully informed'.

Remember: FPIC needs to be sought at key decision-making points throughout the project. It reflects an ongoing relationship with an external party and is not a one-off decision.

At a more detailed level, the guidelines in the table below illustrate the kinds of elements that can help ensure the integrity of an FPIC process.

Preparing for Engagement in FPIC	
Element 1	Map rights, rights-holders, and land use
Element 2	Identify appropriate decision-making institutions
Element 3	Identify national support structures for rights advocacy
Element 4	Develop a process for seeking and obtaining consent
Element 5	Develop the content for consent agreements
Element 6	Agree on a communication plan
Element 7	Develop a capacity building strategy
Implementing a Process for Respecting the Right to FPIC	
Element 8	Integrate the right to FPIC with project or intervention design
Element 9	Ensure alternative information and independent advice
Monitoring and Recourse: Maintaining Consent	
Element 10	Monitor what is agreed in implementation
Element 11	Develop a grievance process
Element 12	Verify consent

Table 4: Guidelines on procedures for respecting the right to FPIC (Source: RECOFTC and GIZ, 2011)

Key Resources on Free, Prior, and Informed Consent
Guide to Free, Prior and Informed Consent (Oxfam, 2010)
Making Free, Prior and Informed Consent (FPIC) Work: Challenges and Prospects for Indigenous People (Forest Peoples Programme, 2007)
Free, Prior, and Informed Consent: Principles and Approaches for Policy and Project Development (RECOFTC and GIZ, 2011)
Guidelines for Implementing the Right of Indigenous peoples to Free, Prior and Informed Consent (IBIS, 2013)
Turning Rights Into Reality (Cultural Survival and Rainforest Foundation US, 2013)
Making Free Prior & Informed Consent a Reality: Indigenous peoples and the Extractive Sector (Cathal Doyle and Jill Carino, 2013)

Advocacy Strategies

Community protocol processes can inform a wide range of advocacy strategies that can be engaged concerning extractive industries or other large-scale infrastructure projects, some of which are discussed below.

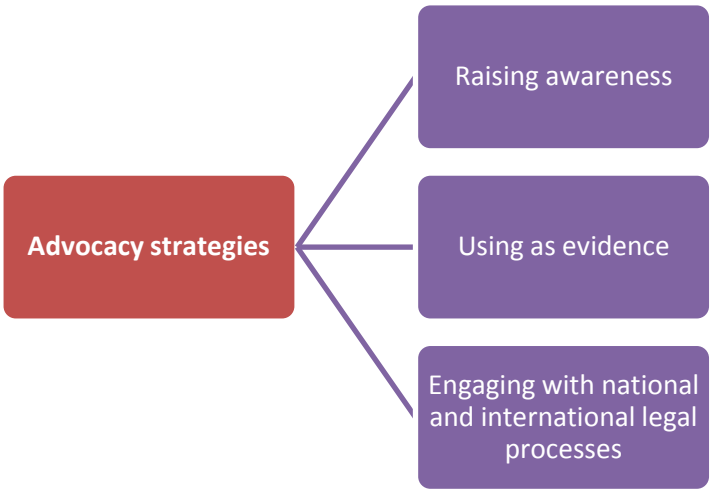


Figure 9. Potential uses of community protocols when engaging in advocacy

Generally, communities engage in particular strategies to pursue specific desired outcomes. Strategies will be dependent on, amongst other factors, the type of remedy sought, the likely cost of the strategy, the availability of resources accessible to the community, the purpose of the strategy, and whether an ongoing relationship with the other party or process is desired. Community protocols are one of many tools that communities are using to mobilise and advocate for their rights and others' responsibilities. The community protocol process can complement other advocacy strategies that benefit from social mobilisation such as filing a complaint with an international grievance mechanism or strategic litigation.

Raising Awareness

Part of the strategy for putting a community protocol into practice may involve raising awareness within communities, between communities and amongst the broader public. Sharing the protocol can be an empowering process in itself by affirming collective identity, clarifying relationships between the community's livelihoods and the environment, and seeking support for the issues raised. Participatory methodologies such as film and photography can be combined with workshops and social media to convey key messages.

Within communities

One of the top priorities during the process of developing and after completion or adoption of a protocol should be raising awareness about it within the community. It is unlikely that all members of a community are able to actively contribute to developing their protocol, so raising awareness about it is important to build broad interest and support. To build on internal cohesion, it is essential to ensure that the community is largely united throughout the process of using the protocol.

In some circumstances, those who developed the protocol may be a small subset of a broader community (for example, artisanal miners in the Alto San Juan community in Colombia)[9]. The community may even be a new group comprised of different ethnicities but with a common identity defined by a shared practice or profession (for example, traditional health practitioners in South Africa, described below in sub-section 6). Even in these situations, the broader communities of these distinct groups would benefit from involvement and mobilisation around the protocol.

There are a number of ways to raise awareness within your community about the protocol and the issues therein. Suggestions for specific uses within the community are highlighted in the table below. When discussing which to use, consider different age groups, ethnicities, and interests. Different forms of communication could be tailored to each and to the community as a whole. Harness the creativity of the youth in the community, who are often interested in the opportunity to use new technology such as cameras, recording equipment, and computers or to use their creativity to contribute to community events. Developing something physically tangible such as a poster or film and planning events can also help mobilise interest in and support for the broader aims of the community protocol.

Communication Tool	What Can it Be Used for?	Questions to Consider
Printed or handmade materials (for example, posters, brochures, calendars, banners)	• Put together a binder with key facts, information, and contact details about the community protocol process • Hold a design competition amongst local youth • Make a banner for use in various community events	• Is there any sensitive or confidential information that should not be documented in written form? • What equipment do you need access to (blank paper, sheet or canvas, pencils, markers, rulers, paint, adhesive tape, computer, printer)?
Social media	• Start a Facebook page or Twitter account to share updates about the	• Are there any concerns about online privacy?

[9] See http://www.community-protocols.org/community-protocols/americas.

	protocol process • Post videos and photo stories on YouTube • Start an online petition	• How could personal identities be protected?
Maps	• Host a workshop to introduce or update mapping of the community's territory or area • Facilitate discussions between youth and elders about territorial boundaries and important resources • Highlight the impact that an activity or project will have on an ecosystem, livelihoods etc.	• Are there any boundaries, locations, or sites that are contested or confidential? • What equipment do you need access to (materials for sketch maps or 3-D models, satellite maps, GPS/GIS software, computer)?
Photography	• Organize a series of photography workshops and sharing sessions • Encourage teachers to incorporate photography into their lessons • Make a Photo Story or slideshow • Hold an exhibition in the community hall, school, or with local officials	• Are there any sensitive or confidential places or artefacts that should not be documented in photographs? • What equipment do you need access to (camera, batteries, film or memory card, computer or printing station)?
Video	• Document the process of developing and using the protocol with video cameras • Work with local youth to edit the film and add narration and music • Hold a community screening or 'premiere'	• Do you have permission of the people in the film? Is there any sensitive or confidential information that should not be documented in film? • What equipment do you need access to (cameras, batteries, computer, projector, screen or white sheet, electricity)?
Theatre or role plays	• Develop a role play or skit with the main people who have been involved in the process of developing and using the protocol and perform it for the whole community	• Where would you practice and hold a theatre performance or role play (community hall, school, sports field, under a tree)? • How would you involve community members who are particularly outgoing and skilled at performing?
Radio or audio recordings	• Interview the main people who have been involved in the process of developing and using the protocol, as well as key community members such as traditional leaders, teachers, and youth groups • Edit the interviews into a 'programme' that can be broadcast on radio or listened to on	• Who has an interesting story to tell? • How would you encourage the person to share the story in an engaging way? Consider developing some guiding questions before the interview • How would you represent different perspectives (men, women, youth,

	computers or handheld devices	elders)? It is important to not only interview people who have the same opinions or perspectives
Cultural festival	• Organize a performance of traditional forms of dance and music related to your community's traditional knowledge and relationship with the environment • Work with local artists to hold an exhibition of traditional handicrafts • Set up stalls for sharing or selling traditional foods and medicines	• Who is particularly skilled at traditional dances, music, handicrafts, and foods? • How can you organize a festival that attracts the whole community and sparks renewed interest in traditional practices?

Table 5: Tools for sharing information and raising awareness within your community

Between communities

In the context of extractive industries, it is likely that issues that do or are likely to impact upon one community will affect other nearby communities. It is also extremely likely that an external investor has worked in other communities, causing similar impacts. If this is the case, then a community's protocol may be relevant for other communities. It would therefore be useful to raise awareness of the protocol amongst similar or neighbouring communities and, where appropriate, collectively strategise or share ideas about the use of the protocol and other advocacy strategies in which they can engage together.

There are a number of tools that can be used to raise awareness about the community protocol amongst other communities. In addition to sharing the community protocol itself (if there is one), other tools include engaging with issues through theatre, photo stories, audio interviews, participatory video, and resource mapping. This can be done through exchange visits, peer learning experiences, community workshops, public forums, and meetings to discuss threats, issues and opportunities. It is important to find out if any such activities have been done in the past and build on local insights and guidance about what worked well. Think ahead and plan accordingly for unique challenges and opportunities that may arise, including differences in language, literacy, ethnicity, religious or cultural observances, social status, and class or caste. Try to understand and respect any pre-existing relations, dynamics, or procedures that guide engagement between members or leaders of different communities.

Amongst the broader public

It may well be appropriate to raise the profile of a community protocol beyond the community level to the broader public. There are a number of ways that this could be done, for example: by individual or collective advocacy to key individuals, organisations, ministries, and/or investors; by engaging with journalists and mainstream media; or by promoting the protocol through an online petition or other forms of social media. If this is a potential strategy that a community wishes to consider, it may be wise to facilitate a discussion about the potential advantages/disadvantages.

Potential Advantages	Potential Disadvantages
Public attention and interest in key issues	Lack of control over the use of information
Attempts to reduce public's impact such as through more informed consumer choices	Inappropriate scrutiny of journalists
Public pressure on politicians and decision-makers	Unwanted presence of curious public or tourists
Tangible forms of support such as donations or human resources	Inaccurate editing of stories or details
Opportunities for engagement with external investors	Tendency of mainstream media to sensationalise information
Change in investor behaviour	Increased attention from external investors to natural resources present

Table 6: Potential advantages and disadvantages of raising public awareness about your community protocol

There are a number of ways and forms with which to raise awareness amongst the general public. A community could use some of the participatory methodologies used during the community protocol process to convey key issues and challenges, for example, by hosting an event that features participatory theatre, role plays, and local photography of key issues. The most common methods of raising awareness on key issues and challenges are through engaging with mainstream media tools such as press releases, press conferences, interviews, and gaining coverage in local and national newspapers, radio, and television. See the box below for general tips for seeking media coverage. Where possible, establish connections with journalists who are sympathetic to a community's cause and who are willing to follow a community's story as news emerges. Engaging with mainstream media can be difficult, time consuming, and sometimes frustrating, but can provide a much-needed boost to public awareness about the community and the issues that are being faced.

- Make the information newsworthy
- Present concise facts and be prepared to provide further information or answers
- Choose your location wisely – provide a visual background to the story
- Make it clear to the audience why the issue is important
- Ensure the first 10 words or 10 seconds are the most effective and attention-grabbing
- Provide contact details such as name, address, phone and fax numbers, email and web addresses
- Make it as easy as possible for journalists to follow up with your story

Box 13: Tips for seeking media coverage

Resources
Media Coverage (KnowHowNonProfit)
How to Organize Media Events (About.com)
How to Write a Killer Press Release (Friends of the Earth, 2007)
How to Write the Perfect Press Release for Journalists (journalism.co.uk)
A Guide to Organizing Community Forums (Community Catalyst, 2002)

Using as Evidence

A community protocol – both in its final form as well as the participatory methodologies used to document and develop it – can provide useful evidence of the impact and challenges faced by a particular extractive activity or project. For example:

- The thorough engagement and completion of a Community Health Impact Assessment Tool not only enables the community to internally reflect on many different short-, medium- and long-term impacts a project or activity, but also provides evidence of these reflections that could form part of a response to an impact assessment, or counter an investor's claims that a project or activity will not have particular impacts (see Annex III.5).
- A community vision and associated development plan can provide evidence that an external investor's activities (such as the building of a school) may not accord with the community's agreed plans for the future and instead offers a tool for constructive engagement around these particular considerations (see Annex III.1).
- Mapping of a community's agreed governance structures and decision-making processes can provide evidence as to whether or not a community did engage in "participation", "consultation" or a process of free, prior and informed consent. If such engagements did not follow the community's protocol, it can be argued that meaningful community engagement did not occur (see Annex III.2).
- Mapping of a community's use of land and natural resources and documentation of the multiple values of particular environmental features (such as a water source, pastures for grazing, sacred sites, and so on) can provide evidence to dispel claims that land is "vacant" and therefore able to be used for an extractive or infrastructure project (see Annexure III.2).

Caution: While a community can use their protocol and participatory methodologies as evidence to prove a point, they may then be limited to using only what is communicated in these tools in future complaints, court cases, and so on. Ensure that "evidence" is as comprehensive as possible before it is presented.

Advocating on a National, Regional and International Level

A community protocol and the participatory methodologies that formed part of the process can support advocacy at national, regional and international levels.

National Laws and Policies

Laws and policies that impact and are otherwise relevant to Indigenous peoples, local communities, and their territories and areas, including biodiversity, forests, agriculture, and protected areas, as well as mining, natural resource use, and access to information, are developed through a range of governmental decision-making processes such as councils or multi-stakeholder committees. They are implemented by specific government agencies, often through a number of subsidiary bodies at the sub-national and local levels. Understanding and engaging with the relevant frameworks in your country is a very important part of effectively using a community protocol.

Engaging with government will not necessarily be easy. Government officials may feel out of reach and there may be high levels of bureaucracy, lack of political will to make necessary changes, lack of

capacity, and lack of understanding of community concerns. However, Indigenous peoples and local communities have the right to participate in the development, implementation, and monitoring of laws and policies. Political pressure from civil society and international organizations sometimes helps government officials understand their obligations. Participating actively and constructively in decision-making processes can thus greatly influence national policies that affect your and many other communities.

- Identify the particular law or policy that you are interested in or that will affect you and find out what decision-making processes exist. Examples may include expert committees, multi-stakeholder committees, technical working groups, or management boards.
- Ask a local government official or search online for the contact details of the relevant national or sub-national point person.
- Contact this person by phone, written letter, or email. Introduce yourself and why you are contacting him or her. Present your message clearly and concisely. Consider forwarding on the community protocol and highlight any relevant government agencies or bodies referenced.
- Explain why it is important for you to participate in the decision-making process, how it would support the community's plans and priorities, and help the process fulfill its mandate.
- If you receive responses, follow up promptly to thank them. Update them about local progress as well so they feel connected to and personally invested in the community.
- If you are attending a meeting, find out as much information as possible beforehand about when and where it will be, who will be there, what the agenda is, and how you can participate. Be prepared to make interventions, provide recommendations, and ask questions.
- Overall, strive to develop positive and ongoing relationships with individual officials and relevant agencies, as they have the potential to be highly beneficial in the long-run.

Box 14: Suggestions for how to engage with government officials and decision-making processes

International Laws and Policies

There are a variety of international processes that affect Indigenous peoples, local communities, and their territories and areas (see the table at the end of this sub-section). These processes involve negotiations between governments and eventually result in international law. International law can include legal instruments such as treaties, declarations, resolutions, recommendations, policies, programmes of work, and plans of action. Their implementation is supported by other inter-governmental organizations. Some international legal instruments are binding upon states (that is, governments much abide by these laws) and others are not.

There are also various international processes that recognise voluntary standards or guidelines to encourage the respect of human rights by governments and business enterprises. These international processes are also important because they provide communities with another opportunity to articulate the impacts of business (and other non-state actors) on their territories and natural resources.

Whilst international processes can initially seem slow and far removed from the daily realities of community life, they can have a large influence on a countries' laws and policies, which in turn directly impact communities at the local level. It is thus critical for community members to participate strategically to ensure that the concerns and priorities outlined in their protocols are effectively represented. Engaging in international processes should be seen as a long-term investment that can

yield potentially significant gains, particularly when these gains are actively used at the national and sub-national levels.

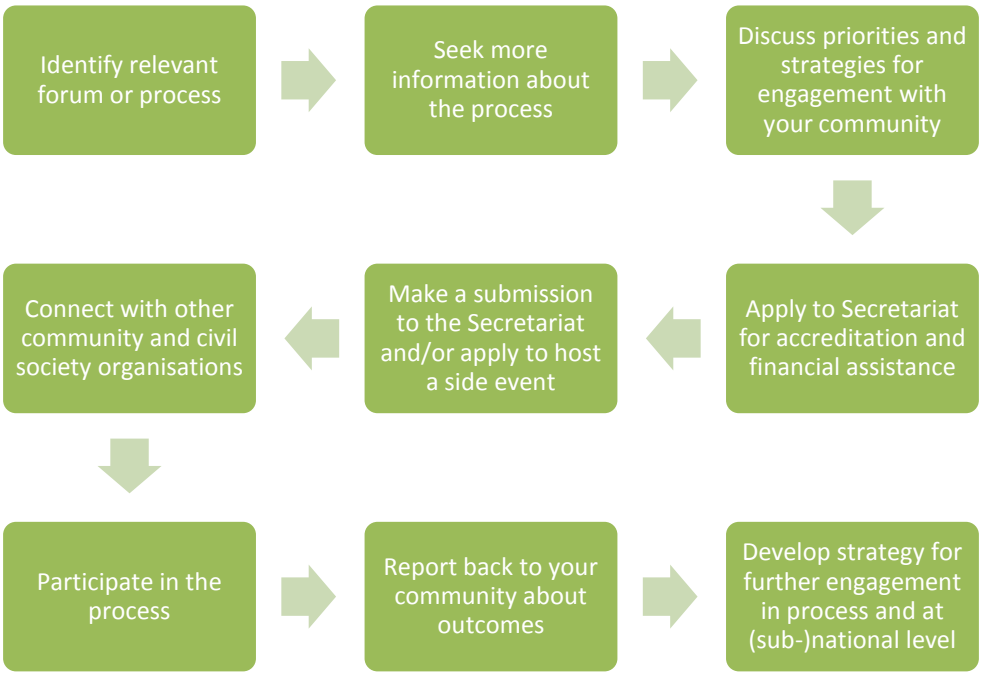


Figure 10: Overview of possible steps for engaging in international negotiations

There are a number of potential steps involved in participating in international processes, outlined in Figure 11. Since many community and civil society organizations in your country or region may have gone through these steps before, you could connect with them to seek guidance and information about their experiences. After gaining accreditation and funding, one of the most important steps is to participate in the process itself. The other most important step is to report back to your community and develop a strategy for engagement in international and national processes. The value of an international process is how its outcomes are used at the local level for positive impact. Draw on experiences with international processes to revisit the community's plans for putting the protocol into practice.

- *Write a submission in response to a specific call for information. This submission will be considered by the Secretariat of the relevant process and potentially included in the information documents for Parties to consider during the negotiations.*
- *Attend coordination meetings and check in regularly with other community and civil society organizations. Within the Convention on Biological Diversity, the International Indigenous Forum on Biodiversity and the CBD Alliance are the main coordinating bodies.*
- *Help prepare and read opening statements, interventions throughout the negotiations, and closing statements. These require a good understanding of issues and politics of negotiations, background research, and discussion with other community representatives in attendance.*
- *Discuss your views with government representatives (known as 'Parties') and lobby them to support your position. In many intergovernmental negotiations, community and civil society organizations require a Party to officially support their statements or interventions. Get to know which Parties are supportive of community concerns and which ones are generally obstructive.*
- *Host a side event to present a positive community initiative or collaboration, or to raise concerns or questions about an issue that relates to the meeting. Prepare flyers and circulate reminders over email and in coordination meetings to increase the number of people in attendance.*

Box 15: Guidance for engaging in intergovernmental meetings

In addition to attending international meetings in person, there are others ways to engage international fora to highlight the challenges and issues in their community protocols. For example, the community could communicate individual complaints, respond to their country's human rights reporting requirements by producing shadow reports, or advocate for their rights if and when representatives from international fora visit their country. See below for a summary of key human rights processes, meetings and monitoring mechanisms that can be engaged with respect to extractive industries in particular.

Forum	Key processes, meetings and monitoring mechanisms
UN Permanent Forum on Indigenous Issues	Session (annual)
Expert Mechanism on the Rights of Indigenous peoples	Meeting (annual)
Special Rapporteur on the Rights of Indigenous peoples	Individual communications Special reports Country reports
UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises	Forum (annual) Country visits
Special Rapporteur on the Situation of Human Rghts Defenders	Individual complaints State report Country visits
Human Rights Committee	State reports Inter-state complaints Individual complaints
Committee on Economic, Social and Cultural Rights	State reports Individual complaints
Committee on the Elimination of all forms of Racial	State reports

	Early-warning procedures Inter-state complaints Individual complaints
Committee on the Elimination of Discrimination Against Women	State report

Table 7: Key human rights intergovernmental and international processes and avenues for advocacy relevant to extractive industries and Indigenous peoples' and local communities' rights

Preventing and Resolving Conflict

Intra-Community Conflict

In the context of extractive industries, which often involves tensions over natural resources and the possibility of benefits from external investors, the development and use of a community protocol may actually bring about intra-community conflict. This is more likely to occur if underlying tensions already exist or if the protocol is being used to address particular threats (see box below for examples). Understanding the nature of such conflict may help communities prevent and overcome it in practice. Conflicts are often due to differences (perceived or otherwise) between groups or individuals, for example, differences in communication styles, in understanding of the issues, and in expectations of the process or outcomes. Addressing these differences proactively and in culturally appropriate ways may help you reach an agreement more effectively.

- Disputes over land or resource ownership and boundaries
- Breaking of customary laws or local management rules
- Disputes over the unfair distribution of work and profits, including jealousy over growing disparities and elite resource capture
- Conflict between Indigenous groups and more recent settlers or migrants
- Resentment over lack of representation or participation in decision-making
- Contradictory natural resource needs and values such as large-scale developments versus local livelihood security
- Differing expectations and interests regarding natural resources management and use, due to age and gender considerations (for example, interest in different uses for land by youth)
- Cultural conflicts between community groups and outsiders
- Unwanted or inappropriate interventions and effects of NGOs or commercial companies

Box 16: Types of conflict or disputes related to natural resource management (adapted from Overseas Development Institute, 2000)

Communities should strive to resolve intra-community conflicts through non-violent means, using, where possible, traditional forms of dispute resolution. Facilitators should be acutely aware of the potential of intra-community conflict during the community protocol process – and strategise ways to deal with such conflict beforehand.

Conflict with External Actors

Where there is conflict between communities and external actors, communities should also strive to result such conflict through non-violent means, including alternative dispute resolution, and outside of the formal litigation (court) system if possible. Although it is not impossible to win court cases, they take up enormous amounts of money, time, and energy and often do not result in favourable outcomes for communities. They also tend to disempower and dispossess communities from their own advocacy processes. Alternative means of dispute resolution provide an opportunity for communities to have more influence over the process and outcomes. Consider the guiding questions in box below for a particular conflict situation that the community would like to address.

- *What are the agreed-upon ground rules for engagement?*
- *Are you seeking consensus, majority, or something else?*
- *Are you able and willing to resolve the issue amongst yourselves or do you require a third-party facilitator, mediator, or ombudsperson?*
- *How familiar are you with the other parties' communication styles? How do you know when they are upset, confused, uninterested, willing to further an idea, or otherwise?*
- *How do you normally communicate important and sometimes emotional points to others? Consider how others may perceive your interventions and reactions and how different forms of communication might be more effective in different circumstances.*
- *Does everyone understand the issues being considered? If not, how can you support each other to access more information and understand each other's perspectives?*
- *What are your personal expectations of the process and outcomes of the engagement?*
- *What are the other parties' expectations of the process and outcomes?*
- *How will you know when you have reached an agreement?*

Box 17: Guiding questions for discussion

- **Facilitator:** Helps set ground rules, promotes effective communication, encourages creative ideas, and keeps discussions on track.
- ***Mediator***: Neutral third-party, encourages careful listening and clear communication, makes no judgments, helps reach a settlement that is mutually satisfying to all involved.
- ***Ombudsperson***: Has authority to receive and help resolve complaints.

Box 18: Key terms

Key Resources on Conflict Prevention
Alternative Dispute Resolution Practitioners' Guide (Centre for Democracy and Governance, 1998)
Conflict Management in Community-based Natural Resource Projects: Experiences from Fiji and Papua New Guinea (Overseas Development Institute, 2000)
Training Manual on Alternative Dispute Resolution and Restorative Justice (UN Office on Drugs and Crime, 2007)
Consensus Building Institute

Violations and Redress

Many communities are subject to negative experiences and human rights violations through interactions with external actors such as government officials, NGOs, researchers, companies, or private landowners. If this happens, the community must discuss the impacts and implications and decide how to respond. Although it may be difficult, the community should strive to be constructive, strategic, and not resort to violence or internal conflict. Appropriate reactions and responses will differ greatly depending on the local context, cultural sensitivities, and political dynamics.

Reaching collective agreement within the community before taking action is generally better, even if it takes more time. Internal disagreement is likely to contribute to the overall conflict. External actors may even take advantage of those differences and deliberately further entrench the social rifts.

Some communities suffer serious abuses at the hands of the military or private security forces, particularly when trying to address heated conflicts over land and resources. If you or anyone in your community is being threatened or has been the victim of an attack (verbal, psychological, physical, or otherwise), notify relevant authorities to resolve the issue through customary or formal legal procedures. Health, safety, and wellbeing are of utmost importance. If you do require legal representation, seek a human rights lawyer with experience in supporting Indigenous peoples and local communities or addressing the particular issue you are facing.

- *Call emergency community meetings*
- *Inform the general public through print or online newspapers and social media*
- *Inform a human rights advocacy group or your national human rights commission*
- *Engage in mediated dialogues or negotiations with the offender*
- *Lodge a formal complaint with the offending organization*
- *Seek legal support from a pro bono lawyer*

Key Resources and Websites on Rights Violations
Indigenous Peoples Human Rights Defenders Network
United Nations Special Rapporteur on the Rights of Indigenous peoples
Amnesty International
Human Rights Watch
Reporters without Borders
Global Witness

Box 19: Ideas for responding to human rights violations

6. How Have Community Protocols Been Used?

Community protocols (in form and in process) have had success in mobilising communities around issues and in establishing dialogue for particular communities, both internally and with external actors. It is important to acknowledge that the community protocol *process* has been instrumental in empowering and building capacity of communities to engage. Since community protocols can take some time to develop, successful dialogues have often taken place without the actual community protocol being finalised or presented to external parties.

There are several contexts within which community protocols have been used, two of which are described in more detail below:

- In the context of access and benefit sharing negotiations in South Africa; and
- To engage within the community and with government agencies in Northern Ghana around a gold mine.

Case Study: Traditional Healers in Bushbuckridge, South Africa

In the area of Bushbuckridge, South Africa, traditional health practitioners contribute greatly to their villages' health and wellbeing through the practice of traditional medicine. However, their traditional knowledge and practices have been and continue to be undermined by outside pressures such as the degradation of medicinal plants. A few years ago, a group spread across a large number of villages and from two different language groups came together to define themselves as a community of traditional health practitioners. They did this to assert their rights under a new national law and to seek recognition of and support for their shared knowledge and customary practices. A community protocol was developed through members of the Kukula Traditional Health Practitioners Association to assert their customary roles within their communities, and their roles in conserving the natural resources and traditional knowledge on which they and generations of traditional healers before them have customarily relied.

The community protocol articulates Kukula's biocultural values, some detail of their traditional knowledge, the threats to their livelihoods (through increasing loss of biodiversity and traditional knowledge), plans for improved conservation, contact information for the Association (for those who wish to engage them), and links between values and national and international law. Their community protocol has been useful in establishing dialogue (and thereafter, a code of conduct) between other traditional healers in the broader communities. With a membership of over 300 traditional healers, the community protocol has been an important factor in the social mobilisation of this community. In terms of practical outcomes, the Association has signed a non-disclosure agreement with a cosmetics company to research the use of their genetic resources and associated traditional knowledge. They have also been able to negotiate access to protected areas to sustainably harvest particular genetic resources.[10]

Case Study: Sacred Groves and Gold Mines in Tanchara, Ghana

In recent years, the Tanchara community of the Upper West Region of Ghana has mobilised in response to a number of illegal gold mining operations. Attracted by the prospecting of Azumah Resources Limited, which received permission from the Ghanaian government to prospect for gold without informing or seeking consent from the Tanchara community, the activities of the illegal miners have posed serious threats to the community's land, soils, drinking water, social security, and sacred groves and sites. In response, the local spiritual leaders and caretakers of the land (the *Tingandem*) came together to protest the illegal activities and to call upon the government to safeguard their sacred groves and sites from mining, citing concerns of their lack of involvement in decision-making processes

[10] Extracted from "The Bushbuckridge BCP: traditional health practitioners organise for ABS in South Africa" (Sibuye, Uys, Cocchiaro and Lorenzen) in *Biodiversity and Culture: Exploring community protocols, rights and consent,* IIED Participatory Learning and Action 65, co-edited by IIED, Kalpavriksh, Natural Justice, COMPAS, and UEBT, 2012. See http://pubs.iied.org/14618IIED.html.

that have led to the mining and the lack of respect for their right to provide or deny free, prior and informed consent.

The Tingandem and broader Tanchara community have been developing a biocultural community protocol to assert their rights under customary, national and international law. The Tanchara community has been using a number of endogenous development tools to strengthen local capacities and customary institutions and governance systems. They have also developed their own tool, the innovative Community Health Impact Assessment Tool, to conduct their own impact assessment and focus on community-determined values and priorities such as education, health, and other spiritual, social-cultural, and material aspects of their ways of life. Thus far, the process of developing a community protocol has been effective in engaging with government authorities on the impacts of mining in the area.[11]

[11] For more information, see "Sacred Groves versus gold mines: biocultural community protocols in Ghana (Guri, Banuoku, Derbile, Hiemstra and Verschurren) in *Biodiversity and Culture: Exploring community protocols, rights and consent,* IIED Participatory Learning and Action 65, co-edited by IIED, Kalpavriksh, Natural Justice, COMPAS, and UEBT, 2012. See http://pubs.iied.org/14618IIED.html.

ANNEX II

COMMUNITY PROTOCOLS IN THE CONTEXT OF EXTRACTIVE INDUSTRIES

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, already-issued 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. While these agreements may disregard international and customary law and recognised best practices, investors usually design their procedures through a top-down approach, prescribing certain deadlines and means of consultation. Such an approach to community consultation is also endorsed by certain international organisations such as the World Bank.

At least five challenges for communities and protocol process facilitators arise from this situation:

1. Conceptualising the community while avoiding further frictions among communities or community members;
2. Managing and reacting to externally imposed timeframes while keeping the protocol process community-driven;
3. Managing stakeholders and a community protocol format to make it a viable tool for external interactions while not imposing any formats upon the communities;
4. Managing the expectations of community members; and
5. Managing sensitive information.

These concerns and possible approaches to deal with them will be addressed in detail below. At the outset, however, it is already 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 commonly 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. Outsiders should thus assume that they cannot meaningfully define a community on behalf of others.

Nevertheless, ensuring clarity about whom and what comprises 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. Facilitators should guide this process but not engage in defining its content. Any descriptions of internal processes or characteristics must accord with the community's values and perspectives. For the purposes of external engagement, it would be beneficial if they were framed in a way that external actors can understand. In other words, the protocol must strike a balance between meaningful representation of the community's culture, livelihoods, traditional knowledge, and customary laws, and the need to engage with state legal systems and procedures.

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, can introduce concepts such as benefit sharing with all or a few community members and often provides (but does not deliver on) promises 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 often inadequate corporate social responsibility policies 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.

As a facilitator, one should expect and acknowledge conflict and approach it as an opportunity for the community to respond creatively and constructively to challenging situations. Sometimes these conflicts may be better to address in small focus groups. Overall, capacity to address internal conflict may be a good indication of how the community may respond to conflict with external actors.

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.

As mentioned above, 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 often 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. [12] National laws on the recognition of Indigenous peoples may further affect this process. It is often the sharing and stewardship of and

[12] The World Bank defines 'affected community' as any group that is affected in a "significant way by a project's activities. This may include both adverse and beneficial impacts, such as loss of land; disruption of livelihood; economic, cultural, health, and infrastructure impacts; and changes in social dynamics and power relations." In contrast, 'qualified community', refers to those communities that are chosen to be represented in community development agreement negotiations and will ultimately benefit from the agreement. This does not include free, prior and informed consent and usually only includes communities that are not opposed to projects and thus willing to negotiate terms. World Bank, Community Development Agreement Resources Book, 2012, p. 18.

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 is crucial. 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, particularly if the protocol is used to address an external issue in a way that has not been discussed or agreed upon by the broader community. It could also lead 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.

The table below highlights a number of different groups that may be marginalised within the community, and the unique features to consider when working with members of these marginalised groups within community. It is extremely important to understand and appreciate the challenges to participation that each face, as well as the unique and valuable contributions that each provide. If you are sensitive and attuned to their particular considerations, you will be better able to facilitate the participation of the community as a whole.

Group	Unique Factors to Consider and Accommodate as a Facilitator
Elders	• Physical constraints such as difficulty walking or travelling, hearing in crowds, or seeing great distances • Level of energy and stamina for long processes such as workshops or data collection • Level of literacy
Women	• Time and physical demands from family responsibilities (including caring for children and parents, gathering and cooking food, farming, cleaning the home) • Physical constraints such as pregnancy • Level of literacy • Communication style and level of confidence, particularly in the presence of men or elders • Cultural expectations and responsibilities, such as appropriateness in openly raising concerns in public fora etc.
Young Adults	• Legitimate differences in value of natural resources, due to experiences of high levels of unemployment

	• Heightened levels of anxiety due to high levels of unemployment • Greater ability to work with and be exposed to newer technologies
Children	• Time and physical demands from school studies and exams, extra-curricular activities, and domestic responsibilities • Limited understanding of historical context and more complex terminology or issues • Short attention span
People who have experienced physical or psychological trauma	• If the trauma was a result of opposition to the extractive industry in question (for example, personal injury or threats), reluctance to openly discuss experiences, especially in large groups • General fear in engaging, particularly due to anxiety of future harm • The need to engage sensitively with the victim and the subject matter, ensuring confidentiality where required
People with physical disabilities	• Physical constraints such as difficulty traveling or gaining access to community spaces, especially if they have crutches or a wheelchair • Participation in certain activities may be impeded, depending on local geography and weather patterns
People with learning disabilities	• Longer timeframes may be required to explain new concepts or tools • May have a preferred way of learning and communicating but may not explicitly say so
People with developmental disabilities	• May have difficulty keeping up with community discussions and activities and may become easily frustrated • May require one-on-one attention and care • May be subjected to abuse or neglect due to lack of understanding amongst family or other community members

Table 8: Considerations for typically under-represented community members.

2. MANAGING TIMEFRAMES

The timeframe for the whole 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;

- Illness or family losses; 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 availability of funds and human resources must be taken into account, timeframes should not be determined primarily by external interests or donor requirements.

Despite these considerations, it is crucial to be aware of the status of an extractive activity or project, potential existing and ongoing consultations and the project's predicted timeline if a community protocol aims at influencing the project, either by asserting the need for consultation (and consent), requesting an impact assessment, or by forming impact and benefit agreements. For that reason, this section provides an introduction to common timelines in investment projects, standard practices for negotiations and consultation processes and potential impacts for community protocol processes.

Generally, most extractive industries follow a five-step process (shown below). 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).

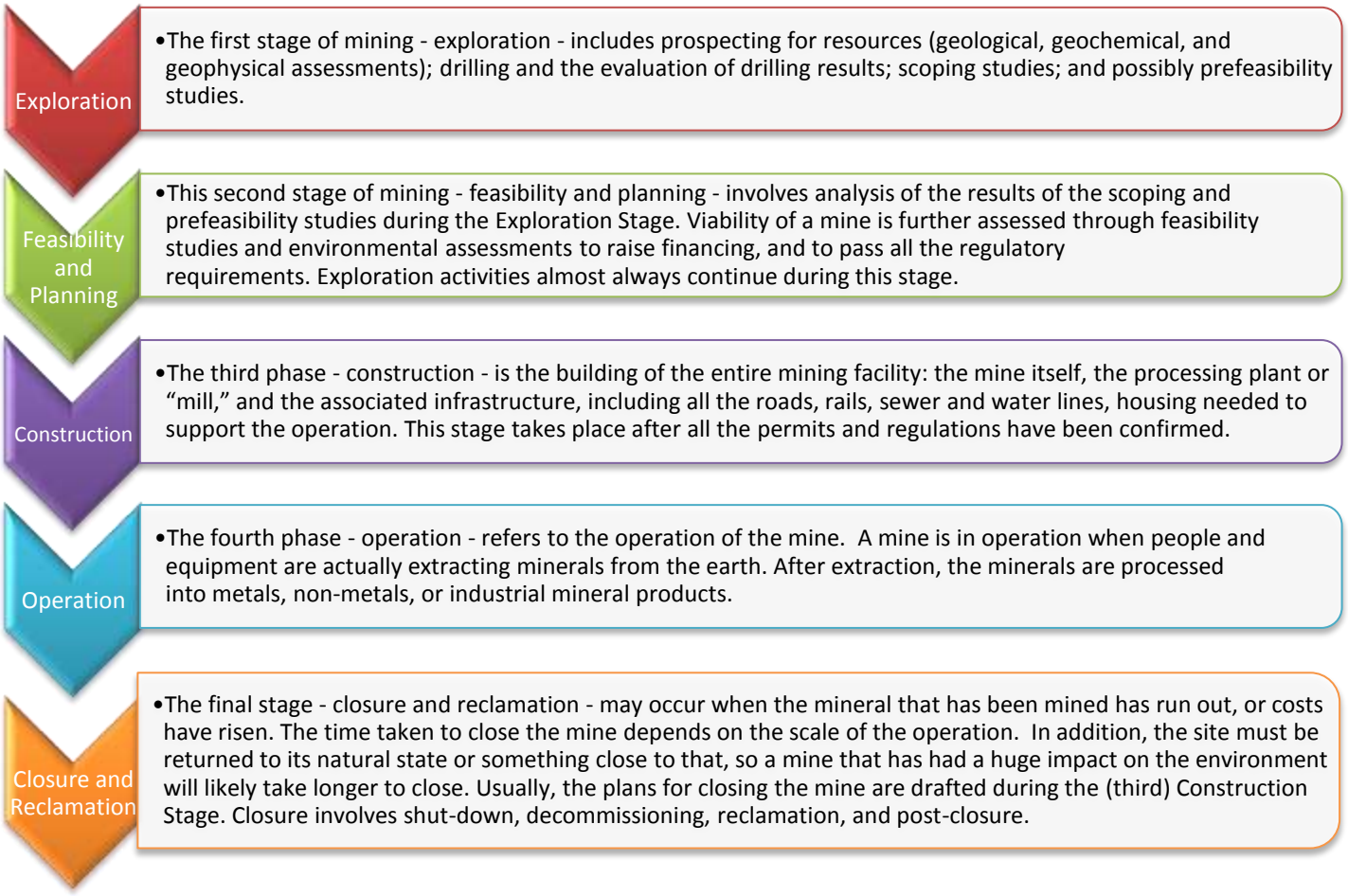


Figure 11: The five stages of mining (adapted from the *Aboriginal Mining Guide*).

It would be most ideal to develop and use a community protocol at the initial phase of a mining project, namely, exploration. That way, 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. A community protocol may be able to assist in the finalisation of these agreements.

- **Memorandum of Understanding** refers to an agreement that documents the awareness of the community and the general agreement to enter into a free, prior and informed consent process. This is no guarantee, however, that the community will grant free, prior and informed consent (exploration stage).
- A **Negotiation Agreement** has the same purpose as a Memorandum of Understanding but is legally binding. It does also not guarantee that a community will grant free, prior and informed consent (exploration stage).
- **Free, prior and informed consent** is not yet common to investment projects, despite its recognition in international law. In most instances, free, prior and informed consent will probably be part of a community development agreement or similar arrangements rather than

being standalone. Also, in some instances free, prior and informed consent might be required at an even earlier stage, in particular where exploration is in a grassroots exploration stage (as opposed to on-site exploration) and where the activities have moderate to significant environmental impacts. Often this is clarified under relevant national laws.

- **Community Development Agreements** have many names (including Sustainable Development Agreements or Impact and Benefit Agreements) and take even more forms. In some countries it is standard that the government negotiates these agreements with only rudimentary involvement of communities. Often these agreements spell out whether the investor is requested to link communities to certain infrastructure, to build social infrastructure such as medical facilities in the surroundings, or do employ a certain number of local work forces. In other instances the agreements are community specific and also address certain impact concerns. Exploration Cooperation and Benefit Agreements and Socio-Economic Benefit Agreements (SEPA) are also forms of Community Development Agreements (feasibility and planning).
- An **Exploration Cooperation Benefit Agreement** seeks to ensure the involvement of skilled community members in the exploration activities, and the sharing of information arising from the exploration (exploration stage).
- A **Socio-Economic Benefit Agreement** (SEPA) details, just as Exploration Cooperation Benefit Agreements, whether the communities will be directly involved in the investment project through employment or other means. Unlike the first generation Community Development Agreements that continue to be used in many developing countries, they are usually of highly complex and sophisticated nature (feasibility and planning, construction, and operation stages).
- A **Joint Venture Agreement** is the most comprehensive form of all agreements shown above. It concerns the involvement of a juridical person of the community (i.e. a company) as an investor in the project (exploration and construction, operation and closure and reclamation stages).
- **Reparation Agreements** are not very common, but could be an opportunity that communities affected by investment projects, in particular by the environmental destruction left behind upon closure of the site, may wish to explore (closure and reclamation stage). **(Adapted from *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 currently reflect this right.

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 in the table below.

Defensive at project development stage:	**Aspirational 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	- Requesting respect for community development plan - Requesting equitable sharing of costs and benefits - Requesting regular information exchange
Defensive during operation:	**Aspirational during operation:**
- Denouncement of fundamental rights violations - Denouncement of expropriation or displacement - Denouncement of environmental impacts	- Calling for greater or more effective participation - Requesting support for local livelihood development

Table 9: Defensive and aspirational aspects of the community protocol

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.

Moreover, as investors and other external actors might not always take up external demands, 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 is shown in the diagram below.

Figure 12: Range of external stakeholders.

In the context of mining projects, there are often various stakeholders involved with respective roles; these are listed in the table 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 selling 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.
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.

Table 10: Key Stakeholders in Mining Projects (Source: *Aboriginal Mining Guide*)

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 luck). The likelihood of realising a community protocol is influenced by a wide range of factors. However, it is often most significantly affected by internal factors such community cohesion, strong leadership and governance structures, and agency and initiative. In the context of extractive industries and large-scale investment projects, it is also important to manage unrealistic expectations. It is unlikely that a community protocol process will ever 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. On the other hand, unexpected opportunities or consequences may arise that may be directly, indirectly, or not at all caused by the community protocol process.

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.

- *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?*

Box 20: Key considerations regarding sensitive information.

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.

ANNEX III

PARTICIPATORY METHODOLOGIES AND TOOLS

As set out in Annex I, section 4 above, a wide variety of participatory methods and tools can be used to guide any step of the community protocol development process. Whilst there is no set formula or any particular tools that are used to develop a community protocol, there are numerous participatory tools that may be useful in developing a community protocol process. What follows are descriptions, tips and guidelines on some tools that facilitators may find useful when developing a community protocol in the context of extractive industries.[13] Some of these tools include:

Figure 13. Potentially useful tools in the community protocol process

[13] These tools are not exhaustive and are only suggestions. A comprehensive list and detailed descriptions of additional tools available are available in Natural Justice's Biocultural Community Protocols: A Toolkit for Community Facilitators.

As set out in Box 1 and Figure 4 in Part I of this document, community protocols normally incorporate a number of different elements. These are set out below, with suggested tools that may be useful in drawing out this information.

Figure 14: Basic elements of a community protocol process and associated tools

1. A Community's Vision for the Future

Tools that can be used:

- Brainstorming
- Community Visioning
- Community Visioning and Action Planning

TOOL: Brainstorming

Purpose: *This tool can be used to encourage a wide range of ideas from a group of people. It is often used to elicit a number of responses without judgment or analysis in order to encourage creativity within the group. Brainstorming is a feature of many different elements and tools in the development of community protocol.*

Resources: Adapted from "For Learn" (European Commission, 2005-7).

- Encourage community members from different sections of the community to join the brainstorming session;
- Participation in brainstorming should be limited to groups of no more than 12 people. Divide larger groups into smaller groups ensure diverse participation from community members;
- After introducing the topic (see the tool below), community members are encouraged to answer broad questions, react and give comments. These responses are set out in a non-judgmental or critical way for all community members to see, so that all participants feel that their contributions are valued and that no contribution is silly or disregarded.
- Then, time should be taken with the participants to reorganise the responses in groups and/or to prioritise the responses.

TOOL: Community Visioning

Purpose: *This tool can be adapted and used to establish a collective community vision based on a community's existing capacities and impending projects. It can help to establish a baseline for community wellbeing, realistic and/or alternative expectations and plans for the future, and form the basis of setting specific goals and action plans, monitoring progress, and re-evaluating priorities, in light of the possible introduction of an extractive industry project. It should involve a highly participatory process with as many sectors of the community as possible to ensure representation from a variety of different perspectives.*

Resources: Adapted from draft Asset-Based Community Development Facilitator's Handbook (Mountain Societies Development Support Programme, 2008) and Guide to Participatory Tools for Forest Communities (CIFOR, 2006). Also adapted from draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12).

- Facilitate an open discussion amongst a broad range of community members using some or all of the guiding questions in the box below. Encourage participants to express their dreams and visions for the community and their natural resources.

- *Where was your community 10 years ago?*
- *Where is your community now?*
- *What is your most positive image of the community in 5, 10, 20, or 50 years?*
- *What changes would you most like to see?*
- *What would you be doing?*
- *What would your children be doing? What would their children be doing?*
- *What role would you play in bringing about these changes?*
- *What accomplishments would you be most proud of?*
- *What would the village surroundings look like?*
- *What role will the existing local institutions have played?*
- *How would the local decision-making system be different?*

Box 21: Key questions for discussion

- Grouping community members into specific groups such as women, youth, elders and other minority groups may help to encourage active participation of less-empowered groups. Be encouraging and non-judgemental; there are no wrong answers. Responses could be provided through discussion, acting, as audio narratives or illustrations, or recorded on pieces of cardboard or chart paper.
- Review the responses provided and ask for further thoughts. Identify potential clusters or themes.
- Discuss how the topics could be represented in a collective community vision. What format would be most appropriate and meaningful?
- A potential follow-up process could involve discussion of specific plans to achieve the visions. This could be presented as vision statements, targets or goals, and activities.
- Once the vision has been agreed upon, record it and make at least one copy for safe-keeping. The community may wish to format it differently and post it in a visible location.

TOOL: Community Visioning and Action Planning

Purpose: *This builds on the community visioning tool at Annex III.1 above and the resource mapping at Annex III.2 below. The purpose of this visioning is to build on the community's initial vision and the resources that they have at their disposal, to determine the community's plans and priorities for development. This is based on recognized, pre-existing strengths of the community.*

Resource: Adapted from draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12).

- Facilitate an open discussion amongst a broad range of community members using some or all of the guiding questions in the box below. Encourage participants to engage in decision-making.
- You may wish to group community members into specific groups such as women, youth, elders and other minority groups, to encourage the active participation of less-empowered groups. Be encouraging and non-judgemental; there are no wrong answers. Responses could be provided through discussion, acting, as audio narratives or illustrations, or recorded on pieces of cardboard or chart paper.

- *Why is it important for the community to enact its vision?*
- *How will you use your resources to make the community's dreams and visions a reality?*
- *What needs to be done in order to make the community's dreams and visions a reality?*
- *What are the targets, goals and activities that will need to occur to make visions a reality?*
- *Who will be involved in making the community's dreams and visions a reality? Do they have the skills and capacity? What further resources do you need?*
- *When will these activities be implemented?*
- *How will an impending project affect the community's visions and plans for the future?*
- *What are the possible positive and/or negative impacts of a project on your community's lands and/or natural resources?*
- *If a company began a project on your land and/or natural resources, how would you see your community develop?*

Box 22: Key questions for discussion.

- Review the responses provided and ask for further thoughts. Try to ensure as broad feedback as possible, within the community, reflecting the views of as many sections of the community as possible. Identify potential clusters or themes.
- Discuss how the topics could be represented in a collective community action plan. Are there clear targets, goals and activities? What format would be most appropriate and meaningful? Do the visions and action plans reflect the plans of local government?
- Once the vision has been finalised and agreed upon, record it and make at least one copy for safe-keeping. The community may wish to format it differently and post it in a visible location. The community may also wish to make the visions and action plans binding. The community may, or may not wish to present the community's visions and action plans to a company that it engages with around its lands and natural resources. The community should decide at what times and in what instances this sharing of information should take place.
- Note that a community's vision and action plan, much like its plans, evolve as time and circumstances evolve. The community should revisit its vision as time progresses to determine whether it still reflects their visions, dreams and plans. If given to external actors, communities should make clear that the vision and action plan reflects a community's own plans for development.

2. Governance Structures and Decision-making Procedures

Tools that can be used:

- Community Institutional Resource Mapping
- Community Decision-making Calendar

TOOL: Community Institutional Resource Mapping

Purpose: *In its basic form, a community sketch map is used to identify locations of important resources or sites, systems of resource use, and customary or property boundaries. In this particular adaptation, it is intended to identify key institutions, groups, and individuals (formal and indigenous) that make decisions that affect those resources and areas. This tool can be adapted and used to provide a visual overview of what comprises the community's decision-making system.*

Resource: Adapted from basic community sketch map such as in 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008) and draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12).

- Facilitate a discussion about key physical features and resources that the community would like to include in the map. Examples include rivers or lakes, forests, mountains and valleys, cultivation areas, sacred sites, and wildlife populations. Not every feature has to be included, especially if it will make the map too crowded or confusing to be useful.
- Consider developing a legend for different symbols or colours that may be used.
- Using large sheets of paper or a blackboard, begin by marking the location of important reference points such as houses and transportation routes.
- A representative group of about 10 people could continue mapping the location of other key features and resources. Often little facilitation is needed.
- Facilitate a discussion about key institutions, groups, and individuals who make decisions that affect the resources on the map. These may include formal systems such as a traditional chief or village association as well as informal systems such as women who cultivate fruit trees. Decisions could range from community-wide management plans to day-to-day collection of resources.
- Continue working with the small group to add these institutions and decision-makers to the relevant locations on the map. This could be done by labelling or using a different colour or pattern to shade in the relevant area.
- Hold a plenary session or broader group discussion to verify the information and gather further inputs or suggestions. Consider facilitating a discussion about what the map shows, for example, overlaps or gaps in decision-making, degree of clarity amongst community members of how decisions are made and by whom, and so on.
- Transcribe the final version of the map and make at least one copy for safe-keeping.

TOOL: Community Decision-making Calendar

Purpose: *This tool can be adapted and used to provide clarity about the decision-making processes that occur throughout a community-defined seasonal cycle. It can be used to raise awareness within the community about when important decisions are made and to promote transparency and participation.*

Resource: Adapted from basic seasonal calendars such as in 80 Tools for Participatory Development (IICA, 2008)

- With a small but representative group, identify what the community perceives as a full cycle of seasons (for example, cultivation, migration cycles or seasonal weather patterns). Seek agreement on an appropriate way to depict that cycle such as in a linear graph, sketch map, or otherwise.
- Facilitate a discussion about key decisions made within that particular timeframe that relate to the community's ways of life. This could include decisions about the timing, location, and methods of livelihood activities, as well as relevant social-cultural practices such as festivals. It could also include decisions about leadership and authority such as participating in district meetings on behalf of the community.
- Encourage community members to record the information on the illustration of the cycle. If available, include details such as who is involved in the decision-making process, when meetings are held, how others can provide input, and so on.
- Facilitate a discussion about the extent to which the broader community is aware of this information. Expressions of exclusion or resentment could indicate the need to make such information more transparent or accessible.
- Consider exploring locally appropriate ways to enhance participation in decision-making processes, particularly of typically under-represented groups such as women and youth.

3. Identifying and Monitoring Key Resources

Tools that can be used:

- Identifying key actors
- Historical Timeline
- Participatory mapping of land use and environmental change
- Human rights and environmental monitoring

TOOL: Identifying Key Actors

Purpose: *This tool can be adapted and used to identify actors who have influence over a particular mining project, a particular resource or the community's overall ways of life.*

Resource: Adapted from Stakeholder Power Analysis (IIED, 2005)

- Prepare a large bull's eye diagram with several concentric circles (see figure below).
- Seek agreement about the focus of the analysis, for example, a particular mining project or a particular resource.

- Facilitate a discussion to identify key actors (companies, institutions, government ministries, groups, or individuals) that affect the mining project, the resource or area. You could begin with identification of actors within the community and then move to external actors.
- Rank them according to power or degree of influence. This could be done with numbers, icons, or different sizes of paper.
- Label them on the diagram. The ring closest to the centre represents the most influence and the outermost ring represents the least influence.
- Consider reflecting on the results by asking questions such as what would happen if the role or influence of one of the key actors changed drastically and how the community would cope with the change.
- As a variation, the same exercise could be done for different timeframes such as the recent past and the future to gain a visual understanding of how key actors and roles have changed over time.

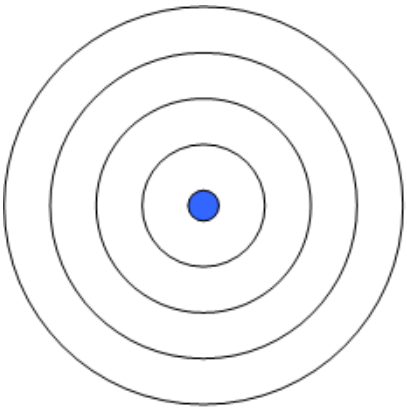


Figure 15: Example of a basic bull's eye diagram

TOOL: Historical Timeline

Purpose: *This is an adapted version of the "Historical Timeline" tool found in Biocultural Community Protocols: A Toolkit for Community Facilitators. The tool can be used to identify significant events and patterns of change related to an extractive industries or infrastructure project. It can help illustrate the dynamic nature of the environment and the varied impacts and influences of unpredictable events over time. It can help community members think about responses and plans to potential future changes.*

Resource: Adapted from Assessing Resilience in Social-Ecological Systems: Workbook for Practitioners (Resilience Alliance, 2010)

- Draw two parallel lines along the length of flipchart papers. Label the top one as 'Extractives Project' and label the bottom one as 'Impacts on the Community'. Seek community agreement on the focus of the timeline (usually a particular resource such as a particular location and its natural resources and the duration (such as from the origin of the community or within living memory up to the present time).
- On the top timeline at each appropriate date, ask community members to describe major events related to the extractives project (for example, company/community engagements, influx of workers from outside community, construction of basic infrastructure, conflicts). On the bottom timeline at the corresponding date, mark observations about the impact on the community. Record not only the direct impacts of the project, but flow on effects, such as migration of labour from outside the community, increase in crime, pollution of water, conflict between community members etc).

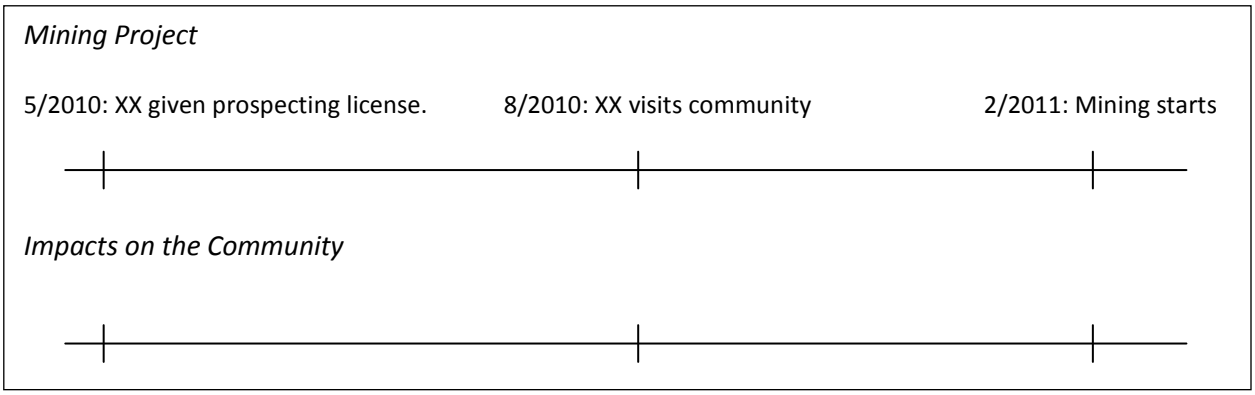


Figure 16: Fictitious example of early stages of a historical timeline in the context of an extractive industries or infrastructure project.

- Facilitate discussion about these events and the corresponding impacts on the community. Try to identify what about the events drove changes in the community and its landscape. This can form the basis of a subsequent discussion of how the community responded to different pressures and levels of resource availability.
- Brainstorm potential or unpredictable changes that may occur in the short-, medium- or long-term and what the impacts on the resource or community would be.

TOOL: Participatory Mapping of land use and environmental change

Purpose: *Much like the historical timeline tool, this adaptation of participatory mapping seeks to identify important natural features in a community's landscape, and identify the location of a project, or its impacts (such as pollution or acquisition over traditional territories and natural resources over time.*

Resource: Adapted from basic community sketch map such as in 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008).

- Facilitate a discussion about key physical features and resources that the community would like to include in the map. Examples include rivers or lakes, forests, mountains and valleys, cultivation areas, sacred sites, and wildlife populations. Not every feature has to be included, especially if it will make the map too crowded or confusing to be useful. Key features that are generally significant for the livelihoods, culture and spiritual wellbeing of community members should be recorded.
- Using large sheets of paper or a blackboard, begin by marking the location of important reference points such as water sources, houses, transportation routes, shared areas for grazing of livestock, growth of crops, and other basic foodstuffs.
- Facilitate a discussion about the impacts of an extractive industries or infrastructure projects. This could include pinpointing of key areas that have been impacted upon by projects including the traditionally owned and utilised lands of the community, infrastructure such as roads, housing, schools and other institutional buildings, natural resources such as water sources, forests, land for grazing etc.

- Distinguish between direct and indirect impacts of the project such as dust, noise, and odour. Work to attempt to gauge when the impacts are at their worst (that is, when the wind blows in a particular direction, at different times of day, or different seasons).
- You may wish to reflect on these impacts and rank them according to how badly they affect the community. You may wish to record these distinctions in different colours on the map, to get a better sense of the chronic and acute impacts of the project.
- Hold a plenary session or broader group discussion to verify the information and gather further inputs or suggestions. Consider facilitating a discussion about what the map shows and elaborate on impacts if and where necessary.
- Transcribe the final version of the map and make at least one copy for safe-keeping.

TOOL: Human Rights and Environmental Monitoring

Purpose: *This tool has two purposes. First is to establish a baseline for social and environmental change in the community. Second is to collect information on the changes or challenges the community is facing. In doing so, Human Rights and Environmental Monitoring empowers communities with valuable information to assist them in safeguarding rights they are guaranteed by various national and international frameworks.*

Resource: See A Practitioners Guide to Human Rights Monitoring, Documentation and Advocacy (The Advocates for Human Rights and the United States Human Rights Network, 2011).

Human rights and environmental monitoring can take various forms and should be adapted to suit the needs and capacities of the community concerned. Ideally, a process of establishing human rights and environmental monitoring in a community would involve doing a baseline study of a number of different issues a community may be experiencing in the context of extractive industries, and then regularly building on this baseline knowledge by recording any changes (positive or negative), based on the baseline. Some of these issues could include:

Changes in the physical landscape of the community including:

- Increase in evidence of outside activity, including project signboards, presence of external actors, identifiable logos on shirts or vehicles, new fences, and so on;
- Increase in land purchases by non-community members;
- Obstruction of access to natural resources, including grazing lands, water resources and forests, by way of fencing or other means;
- Physical development and/or construction;
- Destruction of natural or cultural resources; and
- Changes in air and water quality;

Changes within the community itself including:

- Inability or lessening ability to sustain traditional livelihoods (recording why this is the case);
- Displacement from homes, or grazing, farming or fishing areas;
- Inability to practice social, cultural or spiritual traditions and rituals;
- An influx of wealth to one or more members of the community as a result of a project; and
- Violence, abuse, threats, or intimidation incurred by community members at the hands of external actors.

There are a number of methods to monitor changes within the community. This could include the use of photographs, text messages, or videos recorded and lodged in a central place. Important things to consider when carrying out monitoring activities include:

- Accessible and appropriate channels to bring all of the information to a central location, for example, a community logbook or an SMS hotline;
- Knowledge of relevant laws: understanding the legal frameworks at hand will enable community members to collect the right information and know how it can be used;
- Confidentiality of sensitive information and guaranteeing the security of informants and concerned communities;
- Obtaining precise information with as many necessary details as possible, and making all attempts to verify the information and ensure its accuracy; and
- Being transparent: clearly informing communities and/or relevant authorities if necessary about monitoring activities.

This is only intended to provide a summary of the potential of this tool. For more information, The Advocates for Human Rights have set out a number of potential resources that could be helpful in human rights and environmental monitoring.

4. Inclusiveness

Tools that can be used:

- Semi-structured interviews
- Forum theatre

TOOL: Semi-structured Interviews

Purpose: *This tool can be used to obtain specific or general information by talking to people, families or focus groups. The objective is to ascertain the views of particular (particularly marginalized) groups within the community, and facilitate the discussion of these views in wider community discussions.*

Resource: Adapted from that found in 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008).

- The purpose of semi-structured dialogue is to engage in an exchange with particular groups that may be marginalised either because of their role or position within the community (for example, women, youth or elderly) or because of their views around a particular extractive industries or infrastructure project.
- Determine a general interview guide, based on the nature of the marginalised group. Speak to key community members to obtain a general sense of potential challenges and issues faced prior to the interview.
- When selecting members of the community with which to engage in the dialogue, choose people with a wide variety of experiences. For example, when formulating a women's group, include women farmers, women who may run a small business, women who have domestic duties and are primary caregivers to children, women who are active in the community etc. Be mindful of biases around seasons, time of day, etc.

Examples of potential questions to ask families in the context of extractive industries and infrastructure projects:

- *How long have the family been living within the community?*
- *How has your family been affected by this project?*
- *What has been the biggest hardship that your family has experienced as a result of the project?*
- *Do other families in your community experience similar issues?*
- *How has your family life changed since the project began?*
- *Has the project affected the wellbeing of your family? How?*
- *How are your children affected by the project (positives/negatives)?*

Box 23: Key questions for discussion.

TOOL: Forum Theatre

Purpose: *This tool can be adapted and used to explore inter-personal dynamics and people's ideas about how to improve the outcomes of a problematic scenario. It encourages dialogue and constructive action between people with different opinions or approaches to the same issue.*

Resource: Adapted from material provided by Afghanistan Human Rights and Democracy Organization

- Work with a small group of about 3-5 people in the community to prepare a short scenario about a particular problem or conflict that is relevant to the community in the context of an extractive industries project and involves external actors. An example is provided in the box below.

A community member is angry because a number of his livestock have died as a result of drinking poisonous water caused by pollution from an upstream mine. He and others in the community complain about this problem and the impact of contaminants in their water stream and the impact that this is having on their livelihoods, and their own health and wellbeing. A representative from the company listens to their concerns but denies any responsibility for water pollution. They are escorted off the property and any attempts to follow up their complaints are hampered by additional security that the mining company have now put in place to deal with community members.

Box 24: Sample conflict scenario

- Arrange that the actors perform the scenario in front of an audience from start to finish.
- Have the actors act out the performance a second time but stop it at key moments where a change in the actors' behaviour or actions would affect the way the story unfolds.
- Encourage audience members to step into the scene, replacing one of the actors temporarily, and attempt to positively change the outcome. The actors should stick to their roles within reason but improvise in response. Each key moment could be revised more than once to explore different approaches and perspectives.
- Afterwards, facilitate a discussion amongst the audience members and actors about the different responses and outcomes and how this could be applied to a similar real life situation.

5. Reflections on Impacts of Projects

Tools that can be used:

- Community Health Impact Assessment Tool
- Assessing Key Opportunities and Threats
- Problem Tree Analysis

TOOL: Community Health Impact Assessment Tool

Purpose: *This tool can be adapted and used to assess the likely impacts (positive and negative) of a particular proposed activity on community-defined aspects of wellbeing. The activity under assessment may emerge from within the community or from an external proponent.*

Resource: Adapted from material provided by the Centre for Indigenous Knowledge and Organizational Development (CIKOD) and the Tanchara community in Ghana, which used the worksheet to assess the impacts of gold mining on wellbeing. *See www.community-protocols.org/toolkit for the full version.*

- Encourage the community to seek as much information as possible about the proposed extractive industry or infrastructure project from the company and local officials. Encourage the community to reflect on the project's existing impacts. This will improve the accuracy and fullness of the assessment.
- Facilitate a broad community discussion to identify key aspects of material, social, cultural, and spiritual wellbeing. Examples could include food, health, shelter, recreation, sleep, education, tenure security, presence of social groups, equity, and freedom to practice traditions and beliefs, among others.
- Cluster these different aspects of wellbeing into clear themes. Create an organized table of the different aspects of wellbeing arranged under their respective headings. The table should include columns with space to indicate whether the proposed activity is likely to have a positive, negative, or neutral or no impact. It could also include columns to note if more information is needed and to provide any comments (see table below for an example).
- Going through each row in the table, assess the likely impact of the proposed activity on the different aspects of wellbeing. The score could be a simple 'yes' or checkmark. It could also be more descriptive or provide a relative value on a defined scale.
- After the assessment worksheet is complete, facilitate a community discussion about the results. Overall, is the proposed activity likely to have a positive or negative impact on community wellbeing? Where is more information needed?
- Consider planning specific responses to the proposed activity. If the assessment showed a strong negative impact, the community may wish to take action to resist or prevent the activity from progressing further. If the activity is likely to have positive impacts, they may wish to engage with it proactively to further increase potential opportunities.

1. Good Infrastructure					
Will gold mining have an impact on the following areas:	*YES*		*NO or*	*Need*	*Comments*
	Positive	*Negative*	*Neutral*	*More Info*	
Well-maintained and -connected roads and transportation system					
Well-maintained, well-staffed, accessible and affordable schools					
Well-built, secure markets with amenities (e.g. water, toilets)					
Accessible, affordable, well-staffed and equipped health facilities					
Accessible, affordable, regular, and predictable electricity					
Accessible, affordable, and regular telecommunications					
Accessible, affordable, environmentally friendly, and well-planned housing					

Table 11: Excerpt adapted from the Tanchara community wellbeing impact assessment worksheet with respect to a potential gold mining project

The Tanchara community used the same format as the table above to assess the potential impact of gold mining on the following aspects of their wellbeing:

- Social amenities, including recreational, sports and community facilities, and tourist sites;
- Food security, including cultivated lands and irrigation facilities, variety, quantity and quality of food items produced, and capacity to secure nutritious local consumption year-round and export excess items;
- Social harmony and cohesion, including level of participation in communal and social activities, inter- and intra-community relationships, and low level crime;
- Good governance and leadership, including participation of all in community activities, regular community meetings, self-help initiatives, and good communication between the people and those in governing and power;
- Education, including literacy rates, innovation and creativity in schools, mechanisms for transmitting indigenous knowledge, capacity to secure good livelihoods, high level of self-reliance, and access to continuing education and early childhood education programmes;
- Mechanisms for motivating youth, including presence of youth groups, youth leaders, and good role models, youth-led community activities, orientation and educational programmes such as exchanges, and opportunities to participate in governance structures;
- Working and advancement opportunities, including variety of employable skills and types of jobs available, fair remuneration and good working conditions, number of people in higher quality education, improved lifestyle and family sustainability, and retention of youth;
- Good physical environment, including sanitation facilities, clean air, drinking water, waste management and drainage systems, and accessible natural environment;
- Innovation, including new changes for improved technologies, awards for youth to develop their talents, and existence of community-based research activities;
- Shared moral, cultural, and spiritual values, including freedom of worship and expression and tolerance of spiritual beliefs, freedom to learn and communicate in their own and other

languages, freedom to dress in traditional code, pride in local dishes and foods, ability to make each other accountable for keeping moral values, and promotion of storytelling tradition; and

- Sound mind and body, including healthy people and families, reduced incidence of drug and alcohol abuse, balance between activities, work, and rest, and income to satisfy needs.

TOOL: Assessing Key Opportunities and Threats

Purpose: *This tool can be adapted and used to determine how the community would like to respond to certain opportunities and threats around an extractive industries or infrastructure project. If a large number of opportunities and threats have been identified, the tool can also help prioritise which ones to act upon.*

Resource: Adapted from Toolbox for Jirani Na Mazingira and Community Conservancy Local Level Planning in Laikipia Ecosystem (Zeitz Foundation, 2010)

- Throughout your interactions with the community, a number of opportunities and threats have likely been identified. If not, facilitate a brainstorming session around the opportunities and threats with respect to the project. Aside from redundancies, all suggestions should be considered potentially important.
- Work with a small group to identify criteria for assessing the opportunities and threats. Such criteria should help the community to prioritise and eventually make a decision about whether or not to address the opportunity or threat in question.
- Create an organised table with the opportunities and threats listed in separate columns across the top and criteria listed in separate rows on the left-hand side. See the table below for an example.
- Encourage the small group to consider each opportunity or threat in turn and assess it according to the criteria.
- After the table is completed, the group will likely have a good idea of the most important opportunities and threats and what may be required to address them.
- Facilitate a process of prioritization. This could be done by identifying the issues that have large magnitude and are easy to address. Those that have a small impact and are easy to address are also reasonable choices.
- Once key opportunities and threats are prioritised, you could facilitate a process of visioning and planning to address them.

Assessment of Opportunity or Threat	*Opportunity or Threat A*	*Opportunity or Threat B*	*Opportunity or Threat C*	*Opportunity or Threat D*
MAGNITUDE				
What is the size of the opportunity or threat? (big, medium, small, tiny)				
How easy is it to address? (very easy, moderately easy, difficult)				
IMPACTS				
What is the outcome of addressing it?				
What will happen if it is not addressed?				
Who will it affect?				

RESPONSES
Who can or should address it?
What is needed in order to address it?
What capacities already exist within the community to address it?
How long will it take?
What are the potential costs?
What other factors are required?
Is external support absolutely required? If so, what type of support?
DECISIONS
Should we address it?
If so, what exactly should be done and by whom?

Table 12: Sample criteria for assessing opportunities and threats (Source: Zeitz Foundation, 2010)

TOOL: Problem Tree Analysis

Purpose: *This tool can be used to deepen understanding of the root causes and consequences of a problem. It can be used to reflect upon the possible impacts of an extractives project.*

Resource: Adapted from *Tools for Analysis Power in Multi-stakeholder Processes – A Menu* (Brouwer, Kormelinck, van Vugt, 2011).

- Using flipchart paper, draw a picture of a tree with roots, a trunk, and branches and leaves.
- With a small group, identify a problem that community representatives would like to focus on. Explain the nature of the problem tree:
  - Roots = root causes of the problem
  - Trunk = problem
  - Branches = consequences of the problem
- Start by describing the problem in the trunk of the tree as a group. Then list the causes of the problem in the roots. These can be divided into social, economic, political, cultural causes. These can also include broad attitudes, behaviours, perceptions etc. Do the same for consequences.
- With participants, then set out solutions or strategies to address the issue:
  - What are the most serious consequences;
  - Which causes can the participant address? What are some possible solutions or strategies that exist, that the organisation cannot address, but others can?
  - What causes are others already working on?

A Closing Note

The resources included in this Annex are only some suggestions of many possible participatory tools and methodologies that you may find useful or may have already used. Please refer to some of these other toolkits and guides for additional suggestions:

Key Resources on Participatory Methodologies
Biocultural Community Protocols: A Toolkit for Community Facilitators. Integrated Participatory and Legal Empowerment Tools to Support Communities to Secure Their Rights, Responsibilities, Territories and Areas. (Natural Justice, 2012)
Strengthening Endogenous Development In Africa. A draft methodological Guide for sharing and updating through the African Bio-Cultural Rights and Community Protocol Programme 2011-2012. (Centre for Indigenous Knowledge and Organisational Development, CECIK, Compas, Groundswell International, SAEDP and Mviwata).
80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008).

ANNEX IV

REVIEW OF NATIONAL LAWS & POLICIES THAT SUPPORT OR UNDERMINE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

1. OVERVIEW & INTRODUCTION TO THE LEGAL REVIEW

The aim of this **Legal Review** is to clearly set out the law and policies that support and hinder Indigenous peoples and local communities, as well as to gain a better understanding of the broader context within which Indigenous peoples and local communities are living.

1. Introduction

Across the world, areas with high or important biodiversity are often located within Indigenous peoples and local communities' territories, areas and natural resources. Traditional and contemporary systems of stewardship embedded within cultural practices enable the conservation, restoration and connectivity of ecosystems, habitats, and specific species in accordance with Indigenous and local worldviews. In spite of the benefits that conserved territories, areas and natural resources of Indigenous peoples and local communities have for maintaining the integrity of ecosystems, cultures and human wellbeing, they are under increasing threat. These threats are compounded because very few states adequately and appropriately value, support or recognise the territories, areas and natural resources of Indigenous peoples and local communities and the crucial contribution made by Indigenous peoples and local communities to their stewardship, governance and maintenance.

2. Legal Review (2011-2012)

In this context, the Natural Justice coordinated a legal review between 2011-2012 to analyse the interaction between international and national legal and institutional frameworks, and Indigenous peoples and local communities intent on maintaining the integrity and resilience of their territories, landscapes and seascapes. As a unified body of work, it provides a clear picture of the major threats to the territories, areas and natural resources of Indigenous peoples and local communities, with a specific focus on how legal frameworks and institutions are in specific contexts either supporting or actively undermining them.

Legal Review

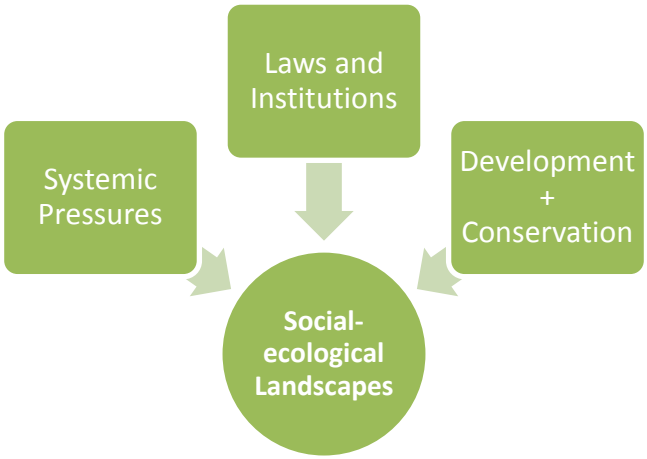
- An analysis of international law and jurisprudence relevant to the territories, areas and natural resources of Indigenous peoples and local communities
- Regional overviews and 15 country level reports:
  - *Africa*: Kenya, Namibia and Senegal
  - *Americas*: Bolivia, Canada, Chile, Panama, and Suriname
  - *Asia*: India, Iran, Malaysia, the Philippines, and Taiwan
  - *Pacific*: Australia and Fiji

The *Legal Review* and *Recognition Study,* including the research methodology, international analysis, and regional and country reports, are available at: http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews

3. Threats

The reports identify three major categories of external threats to the Indigenous peoples and local communities who steward territories and other landscapes and seascapes. The first consists of systemic pressures on the environment and biodiversity worldwide, including habitat loss, overexploitation of resources, pollution, invasive species, and climate change. Identified in 'Global Biodiversity Outlook 3', these systemic pressures are driven either by the predominant market- or state-dominated economies' unsustainable patterns of resource extraction, production and consumption. The mainstream economic and governmental systems also promote rapid urbanization, loss of traditional languages and knowledge systems, dependence on imported and mass-produced foods and material goods, accumulation of capital, and elite capture, often also building on or exacerbating traditional inequities of class, caste, ethnicity, and gender. Due to the inextricable links between Indigenous peoples and local communities and the territories and resources upon which they depend, the loss of biological diversity is simultaneously fuelling the loss of cultural and linguistic diversity and inter-generational transmission of knowledge and practices. This in turn undermines social and cultural cohesion and sophisticated customary systems of caring for territories and resources.

The second category consists of the direct pressures on Indigenous peoples and local communities and their territories and resources. This includes, on the one hand, threats from industrial methods of extraction, production and development, including land conversion for large-scale livestock farms or monoculture plantations, infrastructure and dams, industrial fishing and logging, and large-scale mines. On the other hand, it includes threats from exclusionary environmental and conservation frameworks that undermine the rights and livelihoods of Indigenous peoples and local communities.



Notably, the third category of threats has the potential to exacerbate the first two categories. The research highlights the widespread lack of effective *legal recognition* of a range of Indigenous peoples' and local communities' inherent rights, including to self-determination and self-governance, customary laws and traditional institutions, and customary rights to their territories, lands, waters, natural resources, and knowledge systems. Peoples and communities suffer continued marginalization from legislative and judicial systems and decision-making processes at all levels, impacts of discriminatory and fragmented legal and institutional frameworks, and exclusion from (or negative impacts of) governmental and corporate programmes of so-called development, conservation, and welfare. This is compounded by a corresponding lack of non-legal recognition of the above rights. Even civil society programmes can have inadvertent negative impacts on Indigenous peoples and local communities and their territories, areas and natural resources. *Critically, these factors actively undermine Indigenous peoples' and local communities' abilities to respond to the first two categories of external threats.*

4. Positive Developments: De Jure Rights

In the context of Indigenous peoples and local communities' claims, there is evidence of positive legislative developments at both the international and national levels. The "*Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous peoples and Local Communities: International Law and Jurisprudence* produced as part of the above mentioned Legal Review illustrates the impressive extent of provisions in binding and non-binding international instruments that support Indigenous peoples' and local communities' rights over their territories, areas and resources. Of course, the adoption in September 2007 of the UN Declaration on the Rights of Indigenous peoples (UNDRIP) represents a strong breakthrough in setting international standards for Indigenous peoples' rights. Notably, as per the above box, these rights are not limited to human rights instruments, but can be found across the full spectrum of international law and policy. It also details examples of judgments from regional and national courts that support Indigenous peoples' and local communities' rights, including a growing body of jurisprudence on aboriginal title.[14] The research at the international level confirms the fact that Indigenous peoples and

[14] There is a growing body of case law – through the Inter-American Court of Human Rights, the African Court on Human and Peoples Rights, and national courts – that is supportive of a range of Indigenous peoples' and local communities' rights based on their connection to their territories and unique social, cultural and ecological systems. In the recent case of *Sarayaku v. Ecuador* (2012), for example, the IACHR ruled that Ecuador had, among other things, breached Sarayaku villagers' rights to prior consultation, communal property and cultural identity by approving a project without their involvement. See also Lynch, O. (2011), *Mandating Recognition: International Law and Aboriginal/Native Title*. RRI: Washington D.C.

local communities are not merely stakeholders, but are rights-holders who must be respected and recognized as the stewards of their territories, areas and natural resources.

The 15 country level reports also underscore the significant advances in legislation that supports a range of rights important for Indigenous peoples and local communities'. These findings are corroborated by a recent report by the Rights and Resources Initiative that finds that there have been great advances in the number of laws that grant rights to Indigenous peoples and local communities in the context of forests since 1992.[15]

5. Continued De Facto Marginalisation

Yet despite greater inclusion of provisions supporting Indigenous peoples' and local communities' rights in select legal frameworks, there continue to be significant gaps and weaknesses of various kinds. The legal review identifies the following four tendencies in the international and national legal systems as they relate to socio-ecological systems; factors that are resulting in continued marginalisation of Indigenous peoples and local communities:

- International law is exclusionary and fragmented;
- The development, implementation and enforcement of laws is discriminatory;
- Inappropriate legislation undermines Indigenous peoples and local communities' and their territories, areas and natural resources; and
- Non-legal recognition and support of Indigenous peoples and local communities' and their territories, areas and natural resources remains absent, weak, or inappropriate.[16]

5.1 International Law is Exclusionary and Fragmented

Notwithstanding the advances in international law noted above, the rights gains have been achieved in many cases against determined counterforces. Indigenous peoples and local communities struggle to be fully involved in the meetings, as evidenced in a recent "walk out" of a meeting of the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Where they are involved, certain state Parties continue to try to avoid fully recognizing UNDRIP and other human rights.

While there is clearly a large range of rights at the international level, they remain disconnected from one another. The *International Law and Jurisprudence Report* highlights a 'body of law', but in fact, the instruments and provisions lack any cohesion or integration. This also leads to Indigenous peoples and local communities having to re-negotiate for hard-won rights in other international processes.

5.2 The Development, Implementation and Enforcement of Laws is Discriminatory

Processes through which laws are developed, implemented and enforced, in addition to the substantive provisions themselves, discriminate structurally and consistently against Indigenous peoples and local communities in a number of ways. For example, Indigenous peoples and local communities are seldom meaningfully involved in the drafting of legislation that will impact upon important aspects of their ways of life. Moreover, laws that - on paper - do support the rights of Indigenous peoples and local communities can be severely undermined where state agencies either inadequately implement them or implement them in ways that defeat the laws' original intent (willfully or by neglect). When this happens, Indigenous peoples and local communities find it hard to challenge these decisions, because few countries' governments provide truly effective means with which to hold them accountable for their

[15] Almeida F. 2012. *What Rights? A Comparative Analysis of Developing Countries' Legislation on Community and Indigenous peoples' Forest Tenure Rights*. Rights and Resources Initiative: Washington DC.
[16] The following sections are drawn from Jonas et al. 2012. (Legal Review).

actions, which enables varying degrees of corruption. These factors are compounded because, where these conditions exist, Indigenous peoples and local communities often have correspondingly low levels of knowledge about their rights and ways to use them to influence political processes and engage government agencies.

Where laws are favourable to Indigenous peoples and local communities, they are often disregarded when they are in conflict with laws such as those facilitating industrial resource extraction or production. The content of legal provisions is often discriminatory, in the sense that Indigenous peoples' rights are often of a weaker value or made subject to other rights and interests in a way that is not done for the rights (for example, to property) of other collectivities or individuals in the law. For example, the otherwise praiseworthy Philippines Indigenous peoples rights Act is often undermined by the country's Mining Act.

At another level, the structure of the law runs counter to the natural linkages occurring across landscapes. Thus, even where laws are *prima facie* supportive, they can still be inherently challenging to Indigenous peoples and local communities intent on using them to protect their ways of life. These challenges manifest themselves in at least three ways. First, laws have a tendency to compartmentalize otherwise interdependent aspects of biocultural diversity. While communities manage integrated territories and land- and seascapes, States tend to view each type of resource and associated traditional knowledge through a narrow lens, drawing legislative borders around them and addressing them in isolation.

Second, the fragmentary nature of the law is compounded by the fact that they are implemented by state agencies focusing on particular issues such as biodiversity, forests, agriculture, or Indigenous knowledge systems. The result is that communities' lives are disaggregated in law and policy, forcing their claims to self-determination into issue-specific sites of struggle.

Third, positive law (both international and State) often conflicts with the customary laws that govern communities' stewardship of natural resources. For example, the understanding of 'property' under positive law is based on the private rights of a person (human or corporate) to appropriate and alienate physical and intellectual property. In contrast, communities' property systems tend to emphasize relational and collective values of resources. Furthermore, the implementation of positive law tends to overpower and contravene customary law. A system that denies legal pluralism has direct impacts on communities' lives, for example, by undermining the cultural practices and institutions that underpin sustainable ecosystem management.

These three challenges, among others, highlight the fact that the imposition of international and national laws, which are inherently fragmentary and based on static misperceptions of local realities, is likely to undermine the interconnected and adaptive systems that underpin biocultural diversity. The implementation of such laws compounds these challenges by requiring communities to engage with disparate stakeholders such as government agencies and officials, conservation and development NGOs, private sector companies, the media and researchers, according to a variety of disconnected regulatory frameworks, many of which may conflict with their customary laws, institutions and decision-making processes.

The typical effect of the above factors is that many Indigenous peoples and local communities are deprived of their customary land and resource rights. Even where they are granted such rights constitutionally or legislatively, they are still often dispossessed in practice because of inhibitive administrative barriers and other factors related to lack of respect for the rule of law.

5.3 Inappropriate Legislation Undermines Indigenous peoples and Local Communities' Conserved Territories, Areas and Natural Resources

Across jurisdictions, similar types of laws are often framed in ways that are biased against Indigenous peoples and local communities, further hindering their ability to retain the integrity of their territories, areas and natural resources. Five tendencies emerge in the research.

First, there is a lack of recognition of customary laws and traditional authorities, institutions and decision-making processes. Closely linked to human rights, many countries do not recognize or respect Indigenous peoples' and local communities' customary laws and traditional authorities, institutions and decision-making processes. Where these are not recognized, culturally embedded systems of caring for territories and resources and engaging with others are undermined, often leading to deterioration of traditional languages and sophisticated systems of knowledge and practice. Notably, the multifaceted role of women is often overlooked. Instead, peoples and communities are required to establish institutions that accord with the dominant national paradigm in order for their authorities to be recognized as representatives. This violates a number of international human rights instruments and can lead to outsiders 'consulting' with and obtaining the agreement of imposed structures instead of the legitimate traditional authorities, which further undermines community cohesion and internal capacity to respond effectively to external threats. It is important to recognize also that in some instances, external actors "respect" customary laws and traditional governance structures by liaising with traditional authorities, for example, with respect to utilization of communal lands, areas or natural resources, to the exclusion of the decision-making processes of the entire community. This denial of the holistic concept and practice of customary law equally undermines and disintegrates international human rights instruments, by corrupting particular governance structures in order to obtain a favourable outcome.

Second, there is inadequate recognition of customary land rights. Although there have been a range of land tenure reforms worldwide to address historical injustices, many of these programmes have not placed sufficient emphasis on customary systems of tenure, stewardship or trusteeship. This issue is particularly acute in Africa, where hundreds of millions of rural Africans do not have secure land rights. Additionally, women often lack formal rights to land tenure. Common property resources such as forests and rangelands remain particularly vulnerable, usually considered unoccupied, unregistered and thus available for allocation by the state to individuals or corporations. This situation is a fundamental source of insecurity and actual or potential dispossession for up to half a billion people across Africa. Similar situations exist in many formerly colonized countries, such as those in South Asia.

Insecure land rights mean that Indigenous peoples and local communities are unable to legally enforce their customary ownership, rules and control, particularly when the government issues exploitative concessions and other permits in their territories. It also hinders communities' abilities to make long-term plans in accordance with their own visions and aspirations, compounding legal uncertainty with further marginalization.

The surge in land acquisition globally is rapidly intensifying pressure on the traditional territories of pastoralists, small-scale and subsistence farmers, hunter-gatherers, forest-dependent communities, and others in rural areas. The recognition of land rights, perhaps above all others, will determine the opportunities for Indigenous peoples and local communities' conserved territories, areas and natural resources to contribute effectively to conservation and rural livelihoods.

Third, very few countries provide Indigenous peoples any rights over their sub-soil resources; in those that do, the rights are muted. As previously discussed, where laws regulating access to natural resources (including sub-soil resources) are prejudicial to Indigenous peoples and local communities, laws that otherwise support their rights to retain the integrity of their Indigenous peoples and local communities' conserved territories, areas and natural resources are significantly disabled. This is particularly evident in

the context of laws relating to mining that are privileged by state agencies over the rights of Indigenous peoples and local communities.

Fourth, in many cases, laws relating to natural resources and the environment make no special provision for Indigenous peoples or local communities. This effectively criminalizes their customary livelihoods and resource use practices. At the same time, the legal frameworks create sectoral approaches to agriculture, forests, fisheries, water, wildlife, and other natural resources. This not only fragments otherwise interconnected ecosystems, but it also tends to mandate their overexploitation for short-term economic gains. In this light, new and emerging financial and market-based incentive schemes, for example, access and benefit sharing (ABS) and reducing emissions from deforestation and forest degradation (REDD), remain heavily contested. Some Indigenous peoples and local communities fear these emerging legal frameworks will cause further marginalization, in addition to turning nature and natural resources purely into tradable commodities in the eyes of the state.

Fifth, protected areas laws are falling behind international rights. There have been important advances in international protected area law and policy over the past 10 years, most notably, the Convention on Biological Diversity's Programme of Work on Protected Areas (particularly Element 2 on governance, participation, equity, and benefit sharing). Some countries boast successful examples of shared governance and co-management with Indigenous peoples and local communities or of recognition of Indigenous peoples and local communities' conserved territories, areas and natural resources. However, most governments are struggling to enshrine these international standards within national protected area laws and policies. Notwithstanding salutary examples, the establishment, expansion, governance, and management of state and private protected areas often conflict or overlap with the customary territories, areas and practices of Indigenous peoples and local communities. Few countries' protected area frameworks recognize Indigenous peoples and local communities' conserved territories, areas and natural resources or allow for devolution of governance to peoples or communities. In some that do, there is often an inappropriate imposition of top-down designations, institutional arrangements, or conservation requirements in order to fit them into existing state protected area frameworks. This undermines the diversity of Indigenous peoples and local communities' conserved territories, areas and natural resources arrangements and is a significant risk to Indigenous peoples' and local communities' rights and ways of life.

In formal protected areas that overlap with or subsume Indigenous peoples' and local communities' conserved territories, areas and natural resources, particularly those governed and managed by the state, Indigenous peoples and local communities generally bear a disproportionate amount of the costs and enjoy relatively few benefits other than subservient employment in tourism facilities or as guides or rangers. The establishment or expansion of such protected areas is often a point of conflict with Indigenous peoples and local communities, particularly when the customary use of natural resources is prohibited and traditional knowledge systems are ignored, including those of rural and Indigenous women. This atmosphere of legal uncertainty and often-harsh enforcement of top-down rules undermines customary systems of stewardship, governance and management. The subsequent deterioration of traditional knowledge and customary laws, coupled with pressures from growing populations and migrants, make these protected areas prone to unsustainable use of resources.

2. REVIEW OF NATIONAL LAWS & POLICIES THAT SUPPORT OR UNDERMINE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

Focus & Aims of the Review

The aim of this legal review is to obtain clarity about the legal recognition of the rights of Indigenous peoples and local communities within this pilot project, what legal and policy measures and mechanisms are most important in different settings, how evolving regional regimes have enhanced or undermined these rights, and the impact of these rights by natural resource exploration and extraction, large-scale agricultural land use and infrastructure and/or development projects. In particular, this legal review seeks to deepen and add to lessons learned from previous reviews. With this end, the legal review will identify laws and policies that support Indigenous peoples and local communities' rights at the national level as one way to educate and support Indigenous peoples and local communities in recognizing and enforcing their national rights. It will also identify challenges to such laws through omissions in or the implementation of contradictory laws or policies at the national level that undermine the rights of Indigenous peoples and local communities.

The synthesis report will provide vertical (peoples-/community-national-regional) and horizontal (between peoples/communities and countries) analysis. The information obtained in these legal reviews will be formatted and presented in such a way as to assist Indigenous peoples and local communities in accessing their relevant rights in their respective countries.

Overall, the work will:

- Deepen understanding of the dynamics of environmental, cultural, and human rights law and policy as they relate to the local level, particularly with respect to the recognition of Indigenous peoples' and local communities' rights and in the context of large-scale agriculture, natural resource exploration and extractive and infrastructure/development projects;
- Provide relevant and easily understood recommendations for local-level engagement with national laws and policies;
- Provide a resource for national policy recommendations in the future;
- Be used more widely by individuals and groups from or working with Indigenous peoples and local and mobile communities on issues related to self-determination, governance, and customary sustainable uses of natural resources for a variety of purposes.

Methodology

A **tentative hypothesis** is set out in the box below:

Indigenous peoples and local communities would benefit from appropriate legal recognition of and support at the national level for their:

- *Collective ownership or custodianship of land- and/or water-based territories, areas and resources, including sacred natural sites;*
- *Cultural and natural heritage and corresponding institutional arrangements, including organizations, language, knowledge, and practices;*
- *Laws and regulations (customary or positive) that clearly recognize their rights and corresponding responsibilities to territories, areas, and natural resources;*
- *Recognition of their self-identification and -determination of "community" (including as*

Indigenous peoples, as appropriate);

- *Leadership structures and/or decision-making institutions ('traditional', customary or otherwise); and*
- *Various procedural rights, including to information, full and effective participation (in its broadest terms), and access to justice.*

The central thrust of this review is an examination of Indigenous peoples' and local communities' rights, as set out in national laws and policies. The review is framed in such a way as to elicit an analysis of the gaps between legal and policy provisions and their implementation or use by Indigenous peoples, local communities, and supporting organizations.

National Law & Policy and Experiences of Indigenous Peoples and Local Communities (By National-level Reviewers)

Part 1 will ask for information about the Indigenous peoples and local and mobile communities living in the country. **Part 2** asks the reviewer to consider Indigenous peoples' and local communities' rights in national human rights frameworks. **Part 3** explores land, freshwater and marine laws. **Part 4** focuses on protected areas laws and sacred natural sites.

Because we are also focusing on the broader factors that influence communities' abilities to govern their natural resources, **Part 5** will focus on laws and policies relating to natural resources, the environment and culture, among other related issues. **Part 6** examines natural resources in the context of large-scale agriculture and natural resource exploration and extraction and infrastructure/development projects.

Part 7 will look at non-legal recognition and support that exists in each country. **Part 8** asks whether there are any judgments that are of particular relevance. **Part 9** focuses on implementation of the above laws and policies to investigate any implementation gaps or bottlenecks. **Part 10** requires the reviewer to explain the strategies communities are using to "resist and engage" laws and policies to maintain their Indigenous peoples and local communities' rights. **Part 11** asks for proposals for legal and policy reforms. **Part 12** will be a number of case studies that will be developed as the reviewer works through the earlier sections. **Part 13** asks concluding questions, adding analysis.

Overall, the review will contribute, in part, to the overall "Action Research Questions" set out in Part IV of the framework methodology. In doing so, the review aims to provide a background to laws relevant to Indigenous peoples and local communities, providing a context to the usefulness of community protocols in each country.

Outputs

The primary outputs will be the legal reviews (or supplementary legal reviews) for each pilot, in addition to the summary set out in the action research questions.

Project Management

Each partner organisation engaging in the pilot project will organise the coordination of the reviews. The specifics will be discussed with each partner individually, given the work that has already been done in some regions. Natural Justice will undertake the overall coordination of the project. Any questions or issues can be directed to:

- Stephanie Booker (steph@naturaljustice.org)
- Holly Jonas (holly@naturaljustice.org)
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C. REQUIRED READING

Before beginning the work, please read at minimum the following key documents:

- The 'Synthesis Report': Jonas H., A. Kothari and H. Shrumm. 2012. *Legal and Institutional Aspects of Recognizing and Supporting Conservation by Indigenous peoples and Local Communities: An Analysis of International Law, National Legislation, Judgements and Institutions as they interrelate with Territories and Areas Conserved by Indigenous peoples and local communities*.
- The Review of International Law and Jurisprudence: Jonas H., J. E. Makagon, S. Booker, and H. Shrumm. 2012.
- The relevant country studies in each region. See http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews.

D. AUTHORS' GUIDELINES

We would appreciate if you go through these guidelines carefully before writing the legal review.

Methodology & Formatting

1. Methodology

Please use all available sources of information, including (a) your own observations and research, (b) secondary published or unpublished sources, and (c) responses from other experts and experienced persons. We strongly encourage you to circulate drafts of your case study for review by such experts/experienced persons. In particular, please seek comments and inputs from a range of relevant actors, including Indigenous peoples, local communities, and government officials. Fresh fieldwork is not envisaged as part of this study, but if it helps in providing examples to illustrate your key points, please do use the time available for such fieldwork.

Specifically:

- **Use of examples**: Please use examples that illustrate the key points you are making, either in the main text, or where a slightly extended description may be necessary/desirable, in a box.
- **Boxes** should be used for examples, key terms, or other aspects that need an extended treatment and would disrupt the flow of the main text; these should not be more than about 300 words long.
- **Numbering of sections/sub-sections:** Please use a 2 decimals system, viz. section 1, subsections 1.1, 1.2, etc., and any subsidiary sections within this can be (i), (ii), etc.; please see below.
- **Formatting**: Please use consistent formatting, see below.
- **Referencing**: Please follow the format given below; inconsistency in referencing is very time-consuming for editors, so please do follow this!
- **Footnotes**: Any additional short text (e.g. explanation of a term) that will disturb the flow of the main text should go into a footnote, but feel free to minimise use of footnotes.

Please use Calibri, 11 point font, with numbering and formatting as in the sample below:

Chapter 4: **Recognition and Support**

4.1 Government recognition and support
- (i) Legal backing
- (ii) Administrative help
- (iii) Funding
- (iv) Technical inputs
- (v) Awards
- (vi) Others

4.2 Non-governmental recognition and support
- (i) Technical and legal inputs
- (ii) Advocacy
- (iii) Social recognition
- (iv) Funding
- (v) Awards
- (vi) Others

Referencing Style

- Integrate the citation into the main text within brackets, e.g.: There are several dozen ICCAs in Tanganistan (Brown 2010).
- Where there is more than one reference to the same author with the same year, e.g.: There are several dozen ICCAs in Tanganistan (Brown 2010a). This country has recently put in legislation to recognize ICCAs (Brown 2010b).
- Where there is more than one author with the same surname, add the initial, e.g.: There are several dozen ICCAs in Tanganistan (Brown, B. 2010a). This country has recently put in legislation to recognize ICCAs (Brown, B. 2010b). However, a number of limitations have been pointed out in the relevant laws (Brown, W. 2011).

The full references, at end of chapter, will be:
Author/editor. Year of publication. Title. Publisher. Place of publication. Page numbers (for chapters in books and articles in journals).

Note:

- Book and journal titles are italicized, not chapters and articles.
- Book titles are all caps; chapter and journal articles are not.

Samples:

- **For a book**: Brown, B. 2010a. *Indigenous and Community Conserved Areas in Tanganistan.* Biodiversity Society of Tanganistan, Tangniyan. If this is edited, please add (ed.) after author's name, e.g. Brown, B. (ed.) 2010a.
- **For a chapter in a book**: Brown, B. 2010b. Laws relating to ICCAs in Tanganistan. In White, C*., Towards Community Based Conservation in Tanganistan,* Oxford University Press, London, pp. 33-54. If the book is cited elsewhere in the references, simply write: In White, C., op cit.

- **For an article in a journal**: Brown, W. 2011. Limitations in legislation related to ICCAs in Tanganistan. *Journal of the ICCA Consortium,* Vol. 1 No. 3, pp. 33-36.

E. COUNTRY LEVEL LEGAL REVIEW QUESTIONNAIRE

OVERVIEW

This questionnaire is intended for use by the individuals undertaking national reviews. Before beginning, please familiarise yourself with the publications listed in **Sub-section C** ("Required Reading") above. If you have any questions, feel free to contact the project coordinators to discuss any of the concepts, terms or issues.

Structure of the Questionnaire: The questionnaire is comprised of thirteen parts under the following broad headings:

- **Part 1**: Country, Communities & Indigenous Peoples' and Local Communities' Rights
- **Part 2**: Human Rights
- **Part 3**: Land, Freshwater and Marine Laws and Policies
- **Part 4**: Protected Areas, ICCAs and Sacred Natural Sites
- **Part 5**: Natural Resources, Environmental and Cultural Laws & Policies
- **Part 6**: Natural Resource Exploration and Extraction, Large-Scale Infrastructure/Development Projects and Agriculture
- **Part 7**: Non-Legal Recognition & Support
- **Part 8**: Judgments
- **Part 9**: Implementation
- **Part 10**: Resistance and Engagement
- **Part 11**: Legal and Policy Reform
- **Part 12**: Case Studies
- **Part 13**: Additional Comments

Gender: Please also consider gender as a cross-cutting issue and discuss its relevance as appropriate in each section of the review.

Under each section, we have grouped questions that relate to that broad heading. The questionnaire is fairly detailed, as we want to probe a number of quite specific and multi-faceted issues in each country. It is intended to help you consider a wide range of issues relevant to the sustainable governance of Indigenous peoples' and local and mobile communities' territories, areas, and natural resources.

Responding to the Questionnaire: First, read through the entire questionnaire in order to get a sense of the different sections and information that the whole review intends to elicit. The detail and scope are intended to extend rather than limit your ability to provide a comprehensive response. We acknowledge that you cannot provide comprehensive answers to every question in the suggested space provided. Thus, you have the discretion to frame your answers in order to address the critical questions in your country. If you feel that some questions do not lead you to the most salient issues, please discuss with the project coordinators and use your judgement to ensure your responses provide the most relevant information.

You may choose to:

- Answer each question separately, or
- Where it makes more sense, answer two or more questions together.

If you answer more than one question at a time, please indicate which ones and ensure that you address all of the issues sought by the individual questions. If a question is in no way relevant or applicable to your country, you may skip it but provide a brief reason why.

When reviewing your work, one of the regional focal point's responsibilities will be to ensure that each question is answered either individually or in blocks; or a brief justification is provided if questions are not answered.

Length: We have suggested approximate lengths of answers to illustrate the weight and attention that each section should be given. These are not required lengths, but serve as guidance for how much detail you may wish to provide.

Style: Please substantiate statements with appropriate references. Use the standard formatting provided in the authors' guidelines (see **Sub-section D**).

Consultations and Peer Review: It is critical that you adequately consult and seek input from relevant experts, not only to ensure credibility but also to build a network of in-country supporters around the process and results of the review. We suggest that you consider compiling a list of people and/or organisations that may be able to provide overall guidance or specific inputs at different stages of the review. Such stages may include, for example: gathering relevant laws, policies and supporting literature; involving representatives of Indigenous peoples and local communities in the writing and/or feedback processes to the extent possible; analysing the information in the context of the different questionnaire sections; seeking feedback on drafts from a range of peers, including Indigenous peoples and local communities; and developing strategies for practical follow-up, as appropriate.

Communication and Feedback: If you have any questions, comments, or concerns at any stage of the review, please contact the project coordinators. S/he will be your primary person for communication and feedback throughout the review process.

After you have completed the review, we will seek feedback on the whole process, including what you liked and disliked and suggestions for methodological improvements. Further guidance will be provided towards the end of the review process.

QUESTIONNAIRE

PART 1: Country, Communities & Indigenous Peoples' and Local Communities' Rights (up to 3 pages)

The questions in this section are a guide to illustrate the relevant social, cultural, and political background in order to contextualise the rest of the review. It is not intended to elicit an exhaustive response. As for all the sections, you do not have to answer each question if not relevant for your country, but could consider them and provide an overview that raises the key issues and trends as they are generally perceived in your country. Please also clearly indicate limitations of the data/information you are providing.

1.1 Country

Please give a brief introduction of the country such as, for example: area, population and demography (including rough breakdown of major ethnicities and Indigenous peoples), key geographical and ecological features, and key economic features (including rough breakdown of main industries, trade, and investment priorities).

1.2.1 Communities & Environmental Change

1.2.2 Briefly describe the main Indigenous peoples and major types of local communities or community-level livelihood strategies in your country (e.g. forest-dependent, livestock keepers, marine, etc.).

1.2.3 Are certain communities considered to be Indigenous peoples? If so, how is this identity defined or generally understood?

1.2.4 What are the main drivers of biodiversity loss and land/resource appropriation? Provide a background, if relevant, to the following drivers of biodiversity loss in your country: large-scale or industrial agriculture, extractive industries and so on.

1.2.5 What are the main threats to cultural and linguistic diversity?

1.2.6 Is there a history of and/or ongoing initiatives by peoples or communities to conserve and sustainably use biodiversity?

PART 2: Human Rights (length as necessary)

This section seeks information about provisions in the national human rights framework that relate to Indigenous peoples' and local communities' ways of life and ownership and/or governance of territories, areas and natural resources.

2.1 List and describe any human rights laws or policies that support or hinder Indigenous peoples' and local communities' rights such as, for example, those relating to their self-determination, self-governance, connection with and governance of territories, areas or natural resources, freedom of culture and religion/belief, rights over traditional knowledge systems and innovations, and so on. This may include a wide range of procedural as well as substantive rights.[17]

2.2 Which state agency (or agencies) is mandated to develop and implement these laws and policies? Please describe any relevant political and institutional dynamics with other agencies that are responsible for community rights and welfare (e.g. those listed in other sections of this review). Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?)

2.3 Comment on the extent and effectiveness of implementation. Highlight key processes, dynamics, and pressures that affect the ways in which they are implemented.

2.4 In Section 12, please explain for each case study how the issues discussed in this section operate at the community level.

PART 3: Land, Freshwater and Marine Laws & Policies (up to 4 pages)

[17] Procedural rights include, for example, rights to participation, free, prior and informed consent and access to justice. Substantive rights include, for example, rights to self-determination, healthy environment, and culturally appropriate education.

This section seeks information about the tenure system in your country, with particular focus on recognition of rights over territories, as well as the role of related provisions and processes that hinder community stewardship of territories, areas, and natural resources.

3.1 What is the legislation relevant to recognition (or lack thereof) of community territories? What are the forms of title or tenure?

3.2 Please describe and identify specific provisions within the legislative instruments. Are there any limiting provisions? Is so, what are these? Describe any laws that conflict or take precedence this legislation.

3.3 Does the legislation include rights of Indigenous peoples and/or local communities over sub-soil resources? If yes, where is this located and what is the specific provision? Are there any laws that contradict or take precedence over these rights?

3.4 Which state agency (or agencies) is mandated to develop and implement land/freshwater/marine laws and policies that relate to territorial and tenure rights? Where is this mandate and power derived? (that is, which legislative instrument identifies and gives the State agency its power?). What are the political and institutional dynamics with other agencies?

3.5 Is collective, Native or Aboriginal title recognised? If so, is it considered 'private' or 'public'? Please specify relevant laws and describe any issues surrounding this.

3.6 To what extent, if any, does statutory land/freshwater/marine law enable or allow customary laws and procedures to be used for local stewardship or governance of Indigenous peoples' and local communities' lands and territories? Please set out the relevant legislative provisions and highlight any conditions or restrictions.

3.7 If there are no legal provisions for recognition or support of local stewardship or governance, are there provisions for local management? If so, what are these provisions? Highlight any particular contexts and restrictions?

3.8 Highlight any provisions in the various forms of tenure that require a certain amount or type of conservation. Conversely, highlight any provisions that require a certain amount or type of "development" or conversion and indicate who or what body sets those terms.

3.9 Describe any specific aspects of the existing land/freshwater/marine tenure framework that undermine or hinder community conservation and stewardship of territories, areas, and natural resources. If applicable, comment on any specific aspects of previous (colonial, etc.) tenure frameworks that continue to have significant impacts on community stewardship in contemporary times.

3.10 Describe any specific processes or pressures that infringe upon *de jure* or *de facto* territorial or tenure rights in your country; examples may include land grabbing, natural resource exploration/exploitation, etc. Explain if/how these processes are provided for in the legal and policy framework.

3.11 As a catch-all, please provide any outstanding comments about how the land/freshwater/marine tenure framework supports or hinders community stewardship of territories, areas, and natural resources.

3.12 In Section 12, please explain for each illustrative case study how the issues discussed in this section operate at the community level.

PART 4: Protected Areas, ICCAs and Sacred Natural Sites

This section seeks information about Indigenous peoples' and local communities' conserved territories and areas (ICCAs) and the (sub-)national protected area system, with particular focus on sacred natural sites. Please note that "ICCA" is an internationally recognised term, but may not be used as such within

your country. Each country may have its own unique term(s). Please ensure that the country-specific term adheres to the general features of an ICCA.[18]

4.1 Indigenous Peoples' and Local Communities' Conserved Territories and Areas (ICCAs) (up to 2 pages)

4.1.1 What are the range, diversity, and extent of ICCAs in your country?
4.1.2 How do Indigenous peoples and local communities govern and manage ICCAs (including customs and rules, institutions for enforcing them, ecological or other measures taken for management, and other ways of governing the area)?
4.1.3 What are the main threats to communities' local governance of territories, areas, and natural resources?
4.1.4 What are the main initiatives being undertaken to address the threats to ICCAs?

4.2 Protected Areas (Up to 3 pages)

4.2.1 What are the laws and policies that constitute the protected area framework?
4.2.2 How is "protected area" defined in your country? Indicate to what extent it adheres to the definition of either the Convention on Biological Diversity (CBD) or International Union for Conservation of Nature (IUCN).[19]
4.2.3 Which state agency (or agencies) is mandated to develop and implement protected area laws and policies? Please comment on any relevant political and institutional dynamics with other agencies that are responsible for community rights and welfare (e.g. those listed in other sections of this review).
4.2.4 In general, how well is Element 2 of the Programme of Work on Protected Areas (PoWPA)[20] implemented, especially in relation to Indigenous peoples and local communities? Are there any aspects of the country's existing protected area framework that run counter to Element 2's core principles of good governance, equity, full and effective participation, and benefit-sharing?
4.2.5 To what degree does the protected area framework recognize Indigenous peoples and local communities' rights to their traditional lands, territories and/or natural resources and/or does practice allow for devolution of governance to Indigenous peoples or local communities?

[18] Three general features characterize an ICCA include: a well-defined people or community possesses a close and profound relation with an equally well-defined site (such as territory, area, or habitat) and/or species; this relation is embedded in local culture, sense of identity, and/or dependence for livelihood and wellbeing; and the people or community is the primary player in decision-making and implementation regarding the management of the site and/or species. Community-level institutions thus have the capacity to develop and enforce decisions, *de facto* and/or *de jure* (including according to both customary and state law). Other stakeholders may collaborate as partners, especially when the land is owned by the state, but decisions and management efforts are predominantly by the people or community. The peoples' or community's management decisions and efforts lead to the conservation of habitats, species, genetic diversity, ecological functions/benefits, and associated cultural values, whether or not the conscious objective of management is conservation *per se*. For example, primary objectives may be livelihoods, security, religious piety, safeguarding cultural and spiritual places, etc., with conservation being an additional outcome.

[19] A protected area is defined by Article 2 of the Convention on Biological Diversity as "a geographically defined area, which is designated or regulated and managed to achieve specific conservation objectives". A protected area is defined by IUCN as "a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values".

[20] The text of PoWPA can be viewed on the CBD website: http://www.cbd.int/protected/pow/learnmore/intro/

Comment on how communities are responding to this.

4.2.6 If applicable, describe the constituents and mandates of any multi-stakeholder bodies involved in the governance and management of protected areas in your country.

4.2.7 In Section 11, please explain for each case study how the issues discussed in this section operate at the community level.

4.3 Sacred Natural Sites (Up to 2 pages)

This section seeks information about sacred natural sites that are governed (*de jure* or *de facto*) by a people or a community.

4.3.1 In addition to the above, is there any legislation (protected areas or otherwise) that contains specific provisions for Indigenous peoples' and/or local community stewardship of sacred natural sites?

4.3.2 If so, how are those in power selected (e.g. by election or traditional leadership from within the community, appointed by government, etc.)? Highlight any conditions or restrictions on the types of institutions that are recognised or (customary) laws that can be the basis for local decision-making.

4.3.3 If there are no legal provisions for community stewardship of sacred natural sites, are there provisions for community management of the same? If so, in what contexts and under what conditions or restrictions?

4.3.4 If there is no legal recognition of either community stewardship or management of sacred natural sites, are there any current indications of intentions to move towards legally recognising and supporting them? How might they be included in the legal framework in locally appropriate ways? Comment on to what extent and why such recognition is or is not desired by Indigenous peoples and/or local communities in your country.

4.4 Other Protected Area-related Designations (Up to one page)

Does your country have any World Heritage Sites, Biosphere Reserves, or Ramsar Sites already designated or in the process of nomination that are owned (traditionally or otherwise) by Indigenous peoples and local communities? Please comment on how the nomination process, management plan, and/or decision-making system has accounted for Indigenous peoples' and local communities' rights to free, prior and informed consent, full and effective participation, benefit-sharing and capacity building, and respect for cultural and spiritual values.

4.5 Trends and Recommendations (Length as necessary)

4.5.1 What direction (if any) are protected areas laws and policies moving vis-à-vis Indigenous peoples and local communities?

4.5.2 In addition to what you indicated in 4.1-4.4 above, what are your main recommendations for how protected area laws and policies could be better implemented or perhaps reformed to more appropriately and effectively recognise and support the rights of Indigenous peoples and local communities, specifically with respect to land ownership, stewardship, management, and/or conservation by Indigenous peoples and local communities?

PART 5: Natural Resources, Environmental and Cultural Laws and Policies

This section seeks information about legal recognition of Indigenous peoples' and local communities' ways of life and stewardship of territories, areas and natural resources in a variety of frameworks, including natural resources and the environment, traditional knowledge, and intangible culture and heritage.

5.1.1 Natural Resources & Environment (Up to 2 pages)

5.1.2 Please list and describe the relevant laws and policies, if any, that support or govern Indigenous and local community ownership of natural resources. Are there any limiting provisions affecting the implementation of these laws? Is so, what are these?

5.1.3 Which state agency (or agencies) is mandated to develop and implement these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?) Please describe any relevant political and institutional dynamics with other agencies that are responsible for community rights and welfare (e.g. those listed in other sections of this review).

5.1.4 Thinking more broadly about a range of natural resource or environmental laws and policies (biodiversity, agriculture, fisheries, forests, sub-soil, climate/pollution, genetic resources, etc.), please describe whether and how any of them support or hinder Indigenous peoples' and local communities' ways of life and local ownership, stewardship and management of territories, areas and natural resources.

5.1.5 If there are provisions in any of these laws for Indigenous peoples' and/or local community stewardship of territories, areas or natural resources, how are those in power selected (e.g. by election or traditional leadership from within the community, appointed by government, etc.)? Comment on any conditions or restrictions on the types of institutions that are recognized or (customary) laws that can be the basis for local decision-making.

5.1.6 If there are no provisions in these legal frameworks for community stewardship of territories, areas or natural resources, are there provisions for local management of the same? If so, in what contexts and with what restrictions?

5.1.7 How might these laws be better implemented or perhaps reformed to better support communities who are closely connected to specific territories, areas, or resources and whose ways of life contribute to the conservation and sustainable use of biodiversity?

5.1.8 In Section 12, please explain for each case study how the issues discussed in this section operate at the community level.

5.2 Traditional Knowledge, Intangible Heritage & Culture (Up to 2 pages)

5.2.1 Briefly list and describe any laws and policies (e.g. intellectual property, folklore) that focus on or contain provisions relating to traditional knowledge or communities' intangible heritage and culture, including language that are relevant for Indigenous peoples' and local communities' conserved territories and areas. Are there any limiting provisions affecting the implementation of these laws? If so, what are these?

5.2.2 To what extent do these provisions allow for self-determination, local and/or customary decision-making and governance systems, and access to or tenure over territories, areas, and natural resources?

5.2.3 Which state agency (or agencies) is mandated to develop and implement these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?) Please describe any relevant political and

institutional dynamics with other agencies that are responsible for community rights and welfare (e.g. those listed in other sections of this review).

5.2.4 In Section 12, please explain for each case study how the issues discussed in this section operate at the community level.

5.3 Access and Benefit Sharing (up to 2 pages)

5.3.1 Briefly list and describe laws and policies with respect to access and benefit sharing, including provisions relating to access to traditional knowledge and genetic resources traditionally owned by Indigenous peoples and local communities. Are there any limiting provisions affecting the implementation of these laws? Is so, what are these?

5.3.2 To what extent do these provisions allow for free, prior and informed consent, effective consultations with Indigenous peoples and local communities, recognition of traditional governance systems and/or customary decision-making?

5.3.3 To what extent do these provisions allow for the fair and equitable sharing of benefits arising from access to genetic resources and related traditional knowledge?

5.3.4 Describe any State-implemented laws, policies, frameworks or measures in place that govern processes and/or relations between interested parties and Indigenous peoples and local communities with respect to access and benefit sharing, free, prior and informed consent and the fair and equitable sharing of such benefits;

5.3.5 What State agency (or agencies) has been mandated to develop, implement and monitor these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?)

5.3.6 In Section 11, please explain for each case study how the issues discussed in this section operate at the community level.

PART 6: Natural Resource Exploration and Extraction, Large-scale Infrastructure/Development Projects and Agriculture

This section seeks information about the legislative frameworks in your country focusing on provisions and processes regarding natural resource exploration and extraction,[21] use of lands for large-scale agriculture and infrastructure and/or development projects that hinder the rights of Indigenous peoples and local communities over their territories, areas and natural resources. Reflecting on your answer to 1.2.4 above:

6.1 Natural Resource exploration and extraction

6.1.1 Briefly list and describe laws and policies with respect to natural resource exploration and extraction. How long have these laws and policies been in place? Have they been recently reformed? If so, please describe differences between past and present laws and policies. Are these laws likely to be amended in the future? If so, please discuss potential reforms.

6.1.2 To what extent do natural resource extraction laws take into account the environment and/or human rights? How adequate are these provisions?

6.1.3 How do natural resource extraction laws interact with other legislation such as environmental and human rights laws?

6.1.4 What sorts of natural resources are being explored or extracted?

[21] Extractive industries include any activity that involves the extraction of raw materials from the Earth.

6.1.5 What is the impact of natural resource extraction on other natural resources such as land and water?

6.1.6 Do natural resource extraction laws take precedence over or limit the rights of Indigenous peoples and local communities? How so?

6.1.7 How has natural resource exploration and extraction affected Indigenous peoples and local communities?

6.1.8 How do these provisions conflict with domestic property laws governing land formally owned (through title deeds) or community land laws?

6.1.9 To what extent do provisions with respect to resource extraction allow for free, prior and informed consent, effective consultations with Indigenous peoples and local communities, recognition of traditional governance systems, and/or customary decision-making?

6.1.10 To what extent do these provisions allow for the fair and equitable sharing of costs and benefits arising from resource extraction?

6.1.11 To what extent do natural resource extraction laws contain provisions mandating the provision of an environment, social and/or cultural impact assessment prior to receipt of prospecting and/or extraction licenses?

6.1.12 If natural resource extraction laws contain provisions relating to impact assessments, do those provisions allow for community engagement by way of consultation or free, prior and informed consent?

6.1.13 Describe any State-implemented laws, policies, frameworks or measures in place that govern processes and/or relations between interested parties and Indigenous peoples and local communities with respect to consultation, free prior and informed consent, and the fair and equitable sharing of costs and benefits;

6.1.14 What State agency (or agencies) has been mandated to develop, implement and monitor these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?)

6.1.15 What direction (if any) are these laws and policies moving vis-à-vis communities? What are your main recommendations for how these laws and policies could be better implemented or reformed to protect the rights of communities?

6.2 **Large-scale Infrastructure/Development Projects**

6.2.1 Briefly list and describe the sorts of large-scale infrastructure and development projects taking place in your country. What has been the impact of large-scale infrastructure/development projects on natural resources such as land and water?

6.2.2 How have large-scale infrastructure and/or development projects affected Indigenous peoples and local communities?

6.2.3 Briefly list and describe any laws and policies with respect to the generation of infrastructure and/or development projects in your country. If such laws do exist:

a) To what extent do these laws take into account the environment and/or human rights? How adequate are these provisions?

b) How do these laws interact with other legislation such as environmental and human rights laws?

c) Do these laws take precedence over or limit the rights of Indigenous peoples and local communities? How so?

6.2.4 How do these provisions conflict with domestic property laws governing land formally owned (through title deeds) or community land laws?

6.2.5 To what extent do these provisions with allow for free, prior and informed consent, effective

consultations with Indigenous peoples and local communities, recognition of traditional governance systems, and/or customary decision-making?

6.2.6 To what extent do these provisions allow for the fair and equitable sharing of costs and benefits arising from infrastructure/development projects?

6.2.7 To what extent do relevant laws contain provisions mandating the provision of an environment, social and/or cultural impact assessment prior to the start of an infrastructure and/or development project?

6.2.8 If relevant laws contain provisions relating to impact assessments, do those provisions allow for community engagement by way of consultation or free, prior and informed consent?

6.2.9 Describe any State-implemented laws, policies, frameworks or measures in place that govern processes and/or relations between interested parties and Indigenous peoples and local communities with respect to consultation, free prior and informed consent, and the fair and equitable sharing of costs and benefits;

6.2.10 What State agency (or agencies) has been mandated to develop, implement and monitor these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?)

6.2.11 What direction (if any) are these laws and policies moving vis-à-vis communities? What are your main recommendations for how these laws and policies could be better implemented or reformed to protect the rights of communities?

6.3 Large-scale Agriculture

6.3.1 How prevalent is large-scale agriculture in your country? What plants/trees are being cultivated? Are any of these considered biofuels? Are any of these plants grown with genetically modified organisms (GMOs)? If so, briefly comment on the other "activating" resources that are used to assist growth of such crops.

6.3.2 What has been the impact of large-scale agriculture on other natural resources such as land and water?

6.3.3 Briefly list and describe laws and policies with respect to large-scale agriculture. How long have these laws and policies been in place? Please discuss recent or potential reforms. If such laws do exist:

a) To what extent do these laws take into account the environment and/or human rights? How adequate are these provisions?

b) How do these laws interact with other legislation such as environmental and human rights laws?

6.3.4 Do these laws take precedence over or limit the rights of Indigenous peoples and local communities? How so?

6.3.5 How has large-scale agriculture affected Indigenous peoples and local communities?

6.3.6 How do these provisions conflict with domestic property laws governing land formally owned (through title deeds) or community land laws?

6.3.7 To what extent do provisions concerning large-scale agriculture allow for free, prior and informed consent, effective consultations with Indigenous peoples and local communities, recognition of traditional governance systems, and/or customary decision-making?

6.3.8 To what extent do these provisions allow for the fair and equitable sharing of costs and benefits arising from large-scale agriculture?

6.3.9 To what extent do large-scale agricultural laws contain a mandate for provision of an environment, social and/or cultural impact assessment prior to receipt of prospecting and/or extraction licenses?

6.3.10 If large-scale agriculture laws contain provisions relating to impact assessments, do those provisions allow for community engagement by way of consultation or free, prior and informed consent?

6.3.11 Describe any State-implemented laws, policies, frameworks or measures in place that govern processes and/or relations between interested parties and Indigenous peoples and local communities with respect to consultation, free prior and informed consent, and the fair and equitable sharing of costs and benefits;

6.3.12 What State agency (or agencies) has been mandated to develop, implement and monitor these laws and policies? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?)

6.3.13 What direction (if any) are these laws and policies moving vis-à-vis communities? What are your main recommendations for how these laws and policies could be better implemented or reformed to protect the rights of communities?

PART 7: Non-Legal Recognition and Support (5-10 pages)

This section explores forms of non-legal recognition and support for Indigenous peoples and local communities' conserved territories, areas and natural resources. Non-legal support can include, among other things:

- *Documentation, research and database*: Facilitation of communities in carrying out studies and documentation of their conserved territories, areas and natural resources, and putting these into public or limited forums and databases in ways that further helps in their efforts;
- *Social recognition*: Appropriate public exposure, official or NGO awards, and providing platforms for community members to make their initiatives publicly known;
- *Advocacy*: Lobbying with official agencies and others able to influence policy, law and other forms of recognition, and supporting communities to carry out advocacy at various levels of decision-making processes;
- *Administrative/developmental help*: In-kind support from official administration and development agencies, specifically meant to encourage and recognise Indigenous peoples' and local communities' conservation initiatives;
- *Financial assistance*: Funding directly for Indigenous peoples' and local communities' conserved territories, areas and natural resources initiatives or for related activities;
- *Networking*: Facilitating networks, federations, or forums of Indigenous peoples' and local communities' conserved territories, areas and natural resources, as well as with other civil society organisations and processes; and
- *Legal assistance*: While related to legal recognition, important forms of non-legal recognition include, for example, access to state-funded lawyers or support for paralegal programmes.

In this light:

7.1 In what ways, if any, do government agencies recognise and support through non-legal means the governance and/or management of Indigenous peoples' and local communities' conserved territories, areas and natural resources?

7.2 In what ways, if any, do non-governmental agencies recognise and support the governance/management of Indigenous peoples' and local communities' conserved territories, areas and natural resources?

7.3 What are the key issues related to the non-legal recognition and support given by the government or non-governmental actors to Indigenous peoples' and local communities' conserved territories, areas and natural resources, such as whether the support is appropriate or not, and whether funding is inadequate or excessive, and whether there is an imposition of external institutions?

PART 8: Judgments (Length as necessary)

This section seeks information about (sub-)national case law (including those concerning human rights and the environment) that relates to Indigenous peoples' and local communities' ways of life and stewardship of territories, areas and natural resources.

8.1 Describe any case law/judgments that either support or hinder Indigenous peoples' and local communities' rights. Issues of relevance include, for example, Indigenous peoples' and/or local communities' self-determination, land, territory and natural resource ownership, self-governance, connection with and governance of territories, areas or natural resources, freedom of culture and religion/belief, etc. This may include a wide range of procedural as well as substantive rights.

8.2 If applicable, discuss any major precedents set – either negative or positive in relation to the rights of Indigenous peoples and local communities – and how they may be affecting or used by other communities as leverage in their own cases or movements.

8.3 If applicable, highlight any important case law/jurisprudence from other national or regional courts that communities in your country have used as leverage in their own cases or movements.

8.4 Comment on the impact of these judgments in government or other actors' behaviour towards Indigenous peoples or local communities.

8.5 In Section 12, please explain for each case study how the issues discussed in this section operate at the community level.

PART 9: Implementation (Up to 2 pages)

This section looks beyond laws and policies to focus on their implementation. It seeks information about the extent to which and how relevant provisions are put into effect. This will require an understanding of both specific and broader institutional and political dynamics, as well as understanding of how legal frameworks are operationalised at the community level. In addition to what you have stated above about implementation:

9.1 Identify and comment on key factors that contribute to or undermine effective implementation of supportive provisions.

9.2 Provide specific recommendations to the relevant agencies and other actors such as Indigenous peoples and local communities about how to improve implementation of supporting laws and policies.

PART 10: Resistance and Engagement (Up to 2 pages)

This section seeks information about how communities are responding to legal and policy frameworks. Responses can range greatly from staunch resistance to constructive engagement to "working around" the law; discussion of influencing factors and dynamics is particularly important.

10.1 How are Indigenous peoples and local communities engaging with or resisting laws and policies

(including in their formulation and implementation) specifically to secure ownership of land, territory and natural resources and associated traditional knowledge, local governance and conservation of their territories, areas and/or natural resources?

10.2 If applicable, describe main conflicts between communities who are conserving and sustainably using territories, areas, and natural resources and the private sector, conservation groups, and/or government agencies. What are the types of disputes and how have they emerged? How are they being resolved (if at all)? Highlight in particular how and why communities may be actively using or avoiding certain legal and policy frameworks.

10.3 Briefly describe any broad social movements or trends amongst Indigenous peoples and local communities in response to key laws or policies that affect them. Include reference to any literature such as press releases or photo essays that help illustrate.

10.4 In general, to what extent are Indigenous peoples and local communities aware of and actively responding to laws and policies that affect them? Comment on influencing factors and dynamics (for example, differential access to information and mechanisms for participation).

10.5 Are there any legal empowerment and/or advocacy initiatives in your country, and how effective are they? Are these initiatives accessible to communities? How can communities access these resources?

10.6 Are some Indigenous peoples or local communities 'managing' better than others? If so, why?

10.7 In Section 12, please explain for each case study how the issues discussed in this section operate at the community level.

PART 11: Legal and Policy Reform (Up to 2 pages, using concise bullet points wherever possible)

In addition to specific reforms you have proposed above:

11.1 What institutional, legal and/or policy reforms do you feel are required to better enable Indigenous peoples and local communities to govern their lands, territories and natural resources?

11.2 Specifically, what changes could be made to the existing legal or policy frameworks to ensure appropriate legal recognition and support of such rights?

11.3 Who and how would these reforms be implemented?

PART 12: Case Studies (Two or more illustrative case studies of up to 2 pages each)

With reference to Parts 1-11, please develop two or more case studies that illustrate the dynamics you describe above at the local level. The aim is to get a sense of how the legislative and policy framework is operating in reality, the role and influence of institutional dynamics, and how communities are responding to and engaging with these frameworks. Please provide links and/or references to any relevant case studies or literature that may have already been developed. If possible, comment on trends over time or significant changes that may have occurred since these studies.

PART 13: Additional Comments

In light of the synthesis report entitled "Legal and Institutional Aspects of Recognising and Supporting Conservation by Indigenous Peoples and Local Communities: An Analysis of International Law, National Legislation, Judgments, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities", can you comment on or contribute to the broader dynamics identified, or the categories or nature of external threats to Indigenous peoples and local communities?

ANNEX V
USEFUL LINKS

Guidance on international and regional grievance and corporate accountability mechanisms

International Federation for Human Rights (FIDH): Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms at:

http://www.fidh.org/en/globalization-esc-rights/Business-and-Human-Rights/Updated-version-Corporate-8258

> *Provides a practical tool for victims and their representatives, NGOs and other civil society groups (unions, peasant associations, social movements, activists) to seek justice and obtain reparation for victims of human rights abuses involving multinational corporations.*

Accountability Counsel: Tools for seeking redress at: http://www.accountabilitycounsel.org/resources/arg/

> *The Accountability Resource Guide addresses tools for redressing human rights and environmental violations by international financial institutions, export promotion agencies and private corporate actors.*

Centre for Research on Multinational Corporations (SOMO): Specific information on human rights and grievance mechanisms.

http://www.grievancemechanisms.org/

> *This website is for individuals, workers, communities and civil society organisations who need information and tools to file complaints against a company, business or multinational corporation to address corporate human rights abuses, seek justice and/or obtain reparation.*

Human rights and rule of law assessments

Amnesty International: Human Rights by Country, at: http://www.amnesty.org/en/human-rights/human-rights-by-country

> *Individual country assessments by amnesty international and a constantly updated list of news reports on human rights violations in individual countries.*

Human Rights Watch: World Reports, country chapters, at: http://www.hrw.org/world-report/2013/essays/without-rules

Detailed analysis of human rights situations in all countries based on HRW intern data.

International Bar Association: Rule of Law report series, by country, at: http://www.ibanet.org/Human_Rights_Institute/HRI_Publications/Country_reports.aspx#2012

Selected country reports on the rule of law in individual countries. Often responding to emerging crises.

International resources extraction trends

Chatham House: Resources Future, 2012 at: http://www.resourcesfutures.org/#!/introduction

Resources Future is both an interactive web-based tool and a comprehensive report. It assesses the contemporary political economy of the world's integrated resources market. It analyses trends in the production, trade and consumption of key raw materials and predicts future resources insecurities and areas of conflict and contention.

McKinsey & Company: Resources Revolution, 2011, at: http://www.mckinsey.com/features/resource_revolution

Resources Revolution is a report that predicts future production and demand in key raw materials. It predicts price developments, forecasts conflict points and suggests ways forward to increase resources security.

World Economic Forum: Mining Scenarios 2030, at:

http://www3.weforum.org/docs/WEF_Scenario_MM2030_2010.pdf

The WEF's sector scenarios are developed for industry actors to explore the future of the targeted sectors, and the different factors that influence market behaviour. They are meant to provide tools to improve strategic decision-making, contributing to the sustainability of the global mining and metals sector.

Trade statistics

UN Statistics: Commodities trade statistics database, at: http://comtrade.un.org/

For all trade statistics, always search for imports from a country rather than exports of a country. Most developing countries struggle to maintain data on their exports, while the importers of natural resources (usually industrialised countries) are fairly advanced in trade data collection. Thus, if you need to find out whether African country X has any trade in copper, search for imports from African country X from ALL WORLD, instead of looking for exports by African country X to all.

Trade policy information

WTO: Country Trade Policy Reviews (TPRs) by country, at:
http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm

> *TPRs are periodically conducted and consist of an analysis of a country's trade policies conducted by the WTO Secretariat, and a matching report from the country. The reports identify the main actors in a country, main policy approaches, recent policy reforms and trade priorities. Search for the product or sector you are interested in and search the infrastructure section. TPRs are not exhaustive but focus on key sectors.*

World Bank and Enhanced Integrated Framework: Diagnostic Trade Integrated Studies (DTIS), by country at:
http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:20615178~menuPK:1574524~pagePK:148956~piPK:216618~theSitePK:239071,00.html

> *DTIS are comprehensive assessments of a country's ability to trade and needed policy interventions. They provide a detailed narrative of all trade and investment relevant actors in a country and ongoing projects. They form the basis for trade related technical assistance by development agencies. DTIS always focus on a few selected key sectors, often extractives or infrastructure, as relevant.*

OECD: Export Restrictions on Raw Materials, at:
http://www.oecd.org/tad/benefitlib/exportrestrictionsonrawmaterials.htm

> *A gateway to statistics, policy reviews, global reviews and country, sector and case studies. Outlines all relevant export restrictions on raw materials and the policy reasoning for their adoption. Provides some interesting reviews of mining sector developments and the impact of strategic policies.*

IFC: The World Bank Group in Extractive Industries, by year, at:
http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Oil,+Gas+and+Mining/Development_Impact/Development_Impact_Extractive_Industries_Review/

> *These reports detail the World Bank's activities in extractive industries The annexes that outline country level projects financed by the World Bank, including project specific 'development forecasts' are most relevant as they can detail the status of a project or future aspirations.*

World Bank: Private Participation in Infrastructure Database, at:
http://ppi.worldbank.org/explore/Report.aspx

> *The PPI database identifies and disseminates information on private participation in infrastructure projects in low- and middle-income countries. The database highlights the contractual arrangements used to attract private investment, the sources and destination of investment flows, and information on the main investors. The site currently provides information*

on more than 5,000 infrastructure projects and is updated with last year's data six months after year-end. It contains over 30 fields per project record, including country, financial closure year, infrastructure services provided, type of private participation, technology, capacity, project location, contract duration, private sponsors, and development bank support.

FDI trends and policy

UNCTAD: World Investment Reports, by year, at:
http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/WIR-Series.aspx

The most comprehensive reports on foreign direct investment flows and related policies. See in particular the report from 2007 (Transnational Corporations, Extractive Industries and Development, 2008 (Transnational Corporations and the Infrastructure Challenge, and 2012 (Towards a New generation of Investment Polices).

UNCTAD: Investment Policy Reviews, by country, at:
http://investmentpolicyhub.unctad.org/Views/Public/IndexIPR.aspx

Country specific investment policy reviews that spell out the current policy trends, main actors and strategies.

UNCTAD: International Investment Agreements Database, at:
http://investmentpolicyhub.unctad.org/Views/Public/IndexIIA.aspx

A comprehensive database on all international investment agreements. Note: these are bilateral treaties on investment market access and investor protection.

Legal guidance for investment agreements

International Bar Association: *Model Mining Development Agreement, at: http://www.mmdaproject.org/*

This concerns legal options for mining development agreements (not community development agreements. These are the agreements concluded between investors and host states. The agreement is not a model agreement per se, but a collection of options and best practices. It also includes recommendations on community involvement and makes provisions on fiscal arrangements such as benefit sharing with the host government. It was developed with civil society input and is endorsed by the industry.

Community Development Agreement guidance

EI Resources Book: Extractive Industries Resources Book, at: http://www.eisourcebook.org/

The EIRB is an interactive online resource tool for government officials. It outlines a number of policy considerations for developing extractive industries, ordered along six levels: sector policy and law, contract and regulation; sector organisation and administration; fiscal design; revenue

management; transparency and accountability; and sustainability in the sense of environmental and social management and the linkages of these activities to broader impacts across the economy.

Aboriginal Mining Guide: How to Negotiate Lasting Benefits for Your Community, at:
http://www.miningguide.ca/

An online guide for Canadian First Nations on negotiating mining agreements. It aims at highly sophisticated partnership agreements, including Joint Ventures, but includes very useful information, especially on the structure of extractive industries, scientific details and on investment development plans, including highly detailed timelines and terminology keys.

IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements, 2011, at:
http://gordonfoundation.ca/sites/default/files/publications/IBAToolkit_web.pdf

A detailed toolkit for communities on negotiation community development agreements in the mining sector. It focuses on an extractive industry lifecycle analysis and a comprehensive legal assessment of Canada's relevant legislation While most of it will not be applicable to other countries, it is useful as it provides for a good structure for initial legal reviews and for potential reactions to participation information or consultation rights.

World Bank: Community Development Agreements Source Book, 2012, at:
http://www.eisourcebook.org/cms/Mining%20Community%20Development%20Agreements%20Source%20Book.pdf

Guidance for investors and governments on negotiating community development agreements in the context of extractive industries. Interesting insights on common practices for interacting with communities, including on 'classifications' of 'qualified communities' and on consultation approaches. Details individual steps throughout the life cycle of an investment.

International best-practices and guidelines

UNCTAD: Investment Policy Framework for Sustainable Development, at:
http://investmentpolicyhub.unctad.org/Views/Public/IndexIPR.aspx