



COMMUNITY
PROTOCOLS
TOOLBOX

INTRODUCTION

Indigenous peoples and local communities around the world are dealing with threats and opportunities resulting from industrial investment projects such as extractive industries or infrastructure built to transport natural resource commodities.

Very often, these projects take place in, or otherwise affect, the customary territories and natural resources of communities. How can they respond to these threats and opportunities? One way is through the development of community protocols, which provide a framework for communities to collectively document their identity, link customary laws with national and international law, and engage effectively with external parties.

TOOLBOX DESIGN

Welcome to the *Community Protocols Toolbox*. Inside you will find background information on: (1) the *Toolbox*, (2) community protocols; and (3) the project that inspired this *Toolbox*. In addition, the *Toolbox* consists of five *Booklets* and a *Leaflet*. *Booklet 1* sets forth the elements of community protocols and questions that facilitators should ask in order to understand what developing a protocol will involve in a particular context. *Booklets 2 to 5* expand on the elements raised for consideration and provide practical guidance on how to engage in a protocol process. The *Leaflet (6)* lists online resources providing further information on issues relevant to extractive industries.

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BACKGROUND ON THE TOOLBOX

The purpose of this Toolbox is to serve as a first stop for facilitators who are interested in helping a community to develop a community protocol. It is designed to provide facilitators with a broad overview of the elements they should consider before engaging in a protocol process. It also contains practical guidance on methods for developing community protocols. Overall, the Toolbox is for NGOs, civil society groups, community based organizations, and others interested in supporting local communities who are facing challenges from the extraction of natural resources, although its application is not limited to those situations.

BACKGROUND ON COMMUNITY PROTOCOLS

Communities are profoundly impacted by the effects of national policy decisions and development projects. Often, decisions related to these policies and projects are made without meaningful input from those that will bear the most direct impacts, i.e. indigenous peoples and local communities. This lack of involvement in the planning and implementation of projects can lead to a number of problems, including serious human rights violations.

Over the last few decades, however, there has been increasing recognition that communities' rights must be protected and respected, and that this protection and respect can be facilitated by appropriately engaging with communities and allowing them to meaningfully participate in decisions that affect them. This kind of engagement and participation is often referred to as free, prior and informed consent.

While national legislation and implementation of large infrastructure, extractive, agricultural and other projects can represent the state's views of development, communities have their own visions for development as well. They also have cultural heritage that includes rich histories, traditions, worldviews, deep connections to their lands and natural resources, and customary rules and procedures to regulate conduct as well as interactions between themselves and other parties. This cultural heritage is manifested and expressed in many different ways such as oral traditions and folklore, dances, carvings, and designs.

The challenges for external parties to meaningfully engage with communities, and for communities to catalyze their own internal development strategies are numerous. One way of addressing these challenges is through articulating communities' cultural heritage and any other information deemed relevant by the community in forms that can be understood by external parties. Doing so can help put external actors on notice about the community's identity and ways of life, customary values and laws, and procedures for engagement. Importantly, it can also catalyze constructive dialogue and collaboration to support the community's plans and priorities in locally appropriate ways.

There are many ways to describe the forms that such articulation can take. In this context we use the term "community protocol" to describe both the process and outcome that collects and provides information about and relevant to a community. Community protocols have been developed to address a variety of issues faced by communities, including lack of access to traditional lands, entering into access and benefit sharing agreements, and to deal with large infrastructure projects. They have gained increasing recognition as a useful tool for communities, both nationally and internationally.

One important element of developing a protocol is identifying the "community" that it applies to. The concept of community is dynamic, and might look different in different contexts. In the context of community protocols the term "community" is used generally to refer to those who have come together to engage in a specific process of developing a protocol. They may share territories and resources, a governance structure, have a common cause, and/or engage in similar livelihoods. This is discussed in more detail in the Booklets.

BACKGROUND ON THE PROJECT

To further explore the utility of community protocols in the context of extractive industries, Natural Justice and its regional partners in Argentina, India, Kenya, and Zimbabwe, with the support of the Heinrich Böll Foundation, have undertaken an international project examining the development of community protocols by communities impacted by extractive industries. The project began in July 2013 and will culminate in a Symposium and final publication in 2016.

The aim of the 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 to uphold external actors' responsibilities. Through analysis of the development of community protocols in four different communities, the project set out to answer the following six action research questions:

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?

The Protocol Processes

The project partners are supporting the development of community protocols in the following countries:

Argentina: Communities in north-west Argentina have developed a community protocol with the assistance of local partner *Fundación Ambiente y Recursos Naturales*. The protocol is part of the communities' response to exploration for lithium mining undertaken without their consent. The objective of the protocol is to articulate the appropriate process for obtaining the communities' free, prior and informed consent with regard to decisions that might affect them. The protocol is based on national and international legislation, and is one component of a broad effort for obtaining recognition of the communities' rights, including rights to land.

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

Kenya: Several indigenous communities in Lamu County on Kenya's northern coast are working together to develop a community protocol to address the construction of a port and coal plant in Lamu's pristine estuary. Local partner *Save Lamu*, a community based organization, is facilitating the development of the community protocol. The protocol seeks to address inadequate assessments of the project's impact, as well as the lack of appropriate consultation and consent at the beginning and during the project, unclear discussions around benefit sharing, and lack of resettlement plans, among other issues.

Zimbabwe: A community in the Manicaland Province in eastern Zimbabwe is dealing with impacts from diamond mining activities. Local partner *Chiadzwa Community Development Trust* is assisting the community in developing the protocol, which will support the community's engagement with government and mining companies. The protocol will address the issue of proper compensation for impacts from mining, as well as land rights (the community only has right of use and not land ownership). Issues of historic grievances, particularly over land, have also been raised.

This Toolbox is adapted from Stephanie Booker et al., 2014, *Exploring The Development And Use Of Biocultural Community Protocols To Help Secure Community Interests And Rights In Relation To Extractive Industries*. A Framework Methodology. Natural Justice: Cape Town.

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Kenya: *Save Lamu* and the communities of Lamu County.

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