

MEANINGFUL COMMUNITY ENGAGEMENT IN THE EXTRACTIVE INDUSTRIES

Stakeholder perspectives and research priorities

EMMA WILSON, SARAH BEST, EMMA BLACKMORE AND
SAULE OSPANOVA – 2016



SHAPING
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First published by International Institute for Environment and Development (UK) in 2016

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<http://pubs.iied.org/16047IIED>
ISBN: 978-1-78431-232-9

For further information please contact: International Institute for Environment and Development (IIED), 80–86 Gray's Inn Road, London WC1X 8NH, United Kingdom. newbooks@iied.org, www.iied.org/pubs

Citation

Wilson, E, Best, S, Blackmore, E and Ospanova, S (2016) Meaningful community engagement in the extractive industries: Stakeholder perspectives and research priorities. International Institute for Environment and Development, London.

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The community of Akatakyyeso lies near a gold mining area run by AngloGold Ashanti in Ghana. Jeff Deutsch/Oxfam America

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This paper represents the view of the authors and not necessarily that of IIED.

Acknowledgments

The authors would like to thank the numerous non-governmental organisations, civil society organisations, government, and private sector representatives who participated in interviews for this project. We would also like to thank the students who took part in a seminar at Imperial College in 2014 and participants who attended a workshop held at IIED in March 2015. Thanks also to experts from Total and Statoil who met with us and discussed these issues. We would also like to thank two anonymous reviewers, one from industry, one from civil society, who commented on a late draft of this paper.

Many thanks to Laura Jenks for coordinating the production of this paper and to Ebru Buyukgul and Kate Lewis for supporting the organisation of the workshop. Also thanks to Abbi Buxton who was instrumental in developing the ideas for this project, and co-organised the student session.

This research and publication was funded by UK aid from the UK Government; however the views expressed do not necessarily reflect the views of the UK Government.

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ABBREVIATIONS AND ACRONYMS	1
EXECUTIVE SUMMARY	2
1. INTRODUCTION	8
2. WHAT MAKES COMMUNITY ENGAGEMENT MEANINGFUL?	12
2.1 Consultation or engagement?	12
2.2 Consultation or consent?	13
2.3 Process or outcome?	14
3. SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY ENGAGEMENT	18
3.1 Clarify and align government and company roles	18
3.2 Understand the local context	22
3.3 Start early with a long-term perspective	24
3.4 Build capacities and prepare well	27
3.5 Embed community engagement in the organisation and the value chain	29
3.6 Build trust in the information-sharing processes	32
3.7 Assess the effectiveness of processes and the value of outcomes	34
4. CONCLUSIONS AND RECOMMENDATIONS	38
REFERENCES	46

BOXES

Box 1: Suggested ways to make a consultation/engagement process meaningful	15
Box 2: Desired outcomes of meaningful community engagement	16
Box 3: Seven success factors for meaningful community engagement	18
Box 4: Company–government collaboration over a water conflict in Peru	20
Box 5: Local multi-stakeholder councils in Kazakhstan	21
Box 6: The Berger Inquiry	23
Box 7: Cairn Energy in Greenland: a community agreement in uncertain times	26
Box 8: Community protocol helps community in Ghana respond to mining threats	29
Box 9: Sakhalin Energy: embedding social issues in the contracting chain	31
Box 10: EITI in Nigeria: public trust and entrenched power structures	33
Box 11: Total SRM+ Management Tool	36
Box 12: Prince William Sound Regional Citizens' Advisory Council, Alaska	37

TABLE

Table 1: Comparing the BIC and World Bank proposed standards for meaningful consultation	10
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ABBREVIATIONS AND ACRONYMS

BIC	Bank Information Center
CLO	Community liaison officer
CSO	Civil society organisation
CSR	Corporate social responsibility
EIA	Environmental impact assessment
EITI	Extractive Industries Transparency Initiative
EPC	Engineering, procurement and construction
ESAM	Environmental and social assessment and management
ESS	Environmental and social standards
ESSE	Early strategic stakeholder engagement
FPIC	Free, prior and informed consent
IBA	Impact and benefit agreement
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
IIED	International Institute for Environment and Development
JV	Joint venture
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PS	Performance standard
SEA	Strategic environmental assessment
SPMP	Social performance management plan
UNGPs	United Nations Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

For extractive industry companies, getting stakeholder engagement right is a key element of securing a social licence to operate. Governments also have a responsibility to ensure that communities are adequately consulted before decisions are made on extractive industry developments. While there is a lot of guidance on how to do stakeholder engagement well (mostly targeted at companies), there are still major challenges around actual implementation, and ensuring that public consultation and other forms of community engagement represent a constructive, ongoing dialogue – between companies, communities and the government – and that this leads to positive outcomes for local people and broader society.

The term 'meaningful' has started to appear in international standards for public consultation and stakeholder engagement that are applied to the extractive industries, including the UN Guiding Principles on Business and Human Rights (2011), the OECD Guidelines on Multinational Enterprises (2011) and the World Bank Safeguard Policies (currently in its Phase 3 review as of January 2016). In 2014, in response to the World Bank Safeguards Review, the Bank Information Center (BIC) developed guidance on environmental and social assessment and management (ESAM), including a proposed standard for 'meaningful consultation'. In 2015, the OECD produced draft due diligence guidance on 'meaningful stakeholder engagement', which was reviewed publicly (OECD, 2015).

In the light of these developments, this paper explores whether there is a shared understanding of what 'meaningful' means in this context; to what extent companies, governments and civil society organisations are ensuring that public consultation and other stakeholder engagement processes meet this standard; and what is required to ensure that consultation and engagement lead to better environmental and development outcomes in practice. The paper explores some of these questions from the perspectives of a number of different stakeholders in the extractive industries, including government, industry and civil society.¹

The paper is based on the results of 25 interviews carried out in 2014 with civil society groups, NGOs, researchers, government and businesses based in the UK, the US, France, Romania, Rwanda, Kenya and Kazakhstan, an interactive seminar with 15 students at Imperial College London in 2014, and a meeting with a group of experts from Total in Paris in February 2015. The initial findings were summarised in a background report that was shared with a mixed group of stakeholders who were invited to comment on the paper and/or to attend a half-day workshop at IIED's London offices on 2 March 2015. The workshop was attended by 30 participants from industry, research organisations and NGOs. A final draft of the paper was reviewed by two reviewers, one from the private sector, the other from a civil society organisation. Given the limited nature of the project, this paper should be seen

1. To avoid confusion, it is worth noting here that, while the term 'stakeholder' is often used by companies to refer to all the people and organisations that they engage with in relation to a project and therefore does not refer to companies themselves, in this paper we also use the term 'stakeholder' to refer to all the people and organisations that have a stake or interest in an extractive industry development, including the companies themselves.

as a scoping study, and while we have suggested recommendations based on the research findings, we have also identified areas for further research, which we hope will be taken up by IIED and other organisations. Given the number of initiatives, publications and public discussions on this topic, we believe that it has enduring significance and topicality that will only increase with time.

The main focus of this study is the relationship between extractive industry projects (and their company and government proponents) and the local communities living close to such projects, who may experience positive or negative environmental and social impacts (or indeed both). The target audience for this paper are those who seek to understand current practice, challenges, gaps, opportunities and expectations relating to community engagement.

Our findings indicate that, despite improvements in guidelines and advances in debate and practice, community consultation and engagement processes still frequently go wrong – and people perceiving processes as **not** being meaningful remains a key challenge. There is agreement among different stakeholder groups on the need to address this problem. However, the terminology is slippery – notably in the distinctions and overlaps between ‘consultation’, ‘engagement’ and ‘consent’. There is common interest, though, in how to make all these processes meaningful. The research identified a wide range of perspectives on what makes community engagement meaningful. The emerging definitions of ‘meaningful’ in international standards and guidelines (for example, is the process representative, inclusive, fair) appear to have wide support and act as a common baseline. But some stakeholders (including companies) are looking to go further,

such as going beyond discussion of risks and impacts towards partnerships, development plans and negotiation of benefits.

Standards and indicators of meaningful consultation typically focus on **process**, but there has been much less systematic thinking around what **outcomes** make a consultation meaningful and how to measure the value of those outcomes. Our research identified a range of viewpoints on the desired outcomes across NGOs, companies and government – from building trust, to eliciting community consent, to securing a company’s social licence to operate, to enabling a government to incorporate competing rights and interests into development planning. How, then, can these diverse outcomes be achieved and evaluated?

Our respondents identified several well-known challenges in implementing ‘meaningful community engagement’ which they felt still need to be emphasised. This included the need for senior level leadership and integration of good practice throughout the company and the value chain, and the importance of building capacities in government, companies and civil society to participate in, or run, engagement processes effectively. Our interviews and discussions also raised some further points of interest – such as the role of emotion in stakeholder engagement; issues related to paying community members for participation in consultation processes; and the ways that local politics can affect community engagement.

We identified seven success factors for meaningful community engagement, drawing on evidence from the literature, the field experience of the authors, and the views and opinions of interviewees and workshop participants. We have suggested a set of recommendations

and research priorities relating to each of these success factors. Our findings identified that while there is a lot of focus on – and guidance provided for – companies, there is less guidance for governments, for civil society organisations and for communities. We also feel there is a need for much more research and analysis of the voices of local communities. A further gap, highlighted in particular by workshop participants, is the need to focus much more on the specifics of community engagement in conflict and post-conflict situations. We have thus suggested these as important areas for future research and practical guidance.

The workshop participants emphasised the benefits of meeting to share experience, and suggested that the creation of similar multi-stakeholder spaces would be a useful activity in future to explore some of the identified challenges. Increased openness and willingness to learn from success or failure can help to enhance understanding and capacities for problem solving: this applies to companies, civil society organisations, communities, researchers and governments alike. Our respondents also indicated that more evidence, including case studies of practical experience in particular contexts and comparison across case studies, is needed to justify additional investment in making community engagement meaningful.

RECOMMENDATIONS

Below we list the main recommendations, which include possible actions to help make community engagement more meaningful in practice, along with research priorities identified in the course of the project.

1. Clarify and align government and industry roles

Suggested actions:

- Integrate the principles and practices of meaningful community engagement (from conventions and good practice standards) into legislation and government institutions, including clear definition of requirements for public consultation.
- Analyse government roles and responsibilities relating to community engagement as part of companies' due diligence efforts.
- Coordinate government and company actions effectively throughout the project life cycle.
- Consider the company–government relationship in due diligence monitoring by international financial institutions and other investors.

Research priorities:

- Explore and clarify the roles and responsibilities of different levels of government and how they can and do coordinate and collaborate with industry.
- Identify and address the challenges of government–industry collaboration in weak states, conflict regions and other difficult contexts.

2. Understand the local context

Suggested actions:

- Hire local staff and staff with skills and experience in, for example, anthropological research (within the local community), where appropriate, so as to build and embed understanding of the local context within the company or government department.
- Make sure that company and government personnel, including senior managers, have experience of engaging with local people in field situations to ensure that decision-making is sensitive to local realities.
- Ensure that consultants preparing impact assessments and other documents spend time engaging with local communities and tailor their conclusions and recommendations to local contexts, rather than basing them on standard conclusions used elsewhere.
- Consider the field experience, skills and capacities, as well as time spent with communities by managers and operational staff, as part of investors' due diligence.

Research priorities:

- Carry out in-depth case study research exploring the local socio-cultural and political contexts of diverse extractive industry projects, especially in difficult contexts such as post-conflict situations and oppressive regimes.
- Conduct broader anthropological field research in regions where extractive industries are operating, in order to understand the wider context and how the industries fit within that context.

- Develop targeted guidance on how to understand the local context and how to apply that understanding in a project situation, drawing on learning from in-depth case studies.

3. Start early with a long-term perspective

Actions:

- Conduct government-led, in-depth community engagement prior to major industrial development in order to discuss future options, elicit desirability of plans and assess cumulative impacts, in alignment with a strategic environmental assessment (SEA).
- Target company, government and investor due diligence efforts at a longer time horizon (for example 40 years), addressing cumulative effects and long-term development opportunities.
- Develop and share good practice in the negotiation, implementation and evaluation of benefit-sharing agreements.
- Invest in community engagement activities and the required staff capacities by junior companies and others engaged in exploration and other early project activities.

Research priorities:

- Explore the concept of 'partnership' between government, industry and communities.
- Conduct research into the way that benefit-sharing agreements are negotiated and implemented, and how effective they are at improving well being and livelihoods.

- Study the community engagement responsibilities of junior, as well as major companies and governments, including exit strategies, transferring responsibilities in a buy-out situation, and mitigating the effects of 'boom and bust'.

4. Build capacities and prepare well

Actions:

- Build local social and cultural knowledge and 'emotional intelligence' among company and government personnel and learn from experiences of conflict and failure in community engagement.
- Build the skills within companies and government agencies to discuss future scenarios and complexity with local communities.
- Build community capacities to engage and build realistic expectations of a potential project.
- Organise pre-consultation processes to build understanding and awareness among local stakeholders prior to important consultation events, such as official public hearings as part of environmental impact assessments.
- Ensure effective collaboration among donors and others supporting capacity building, as well as among departments within companies and government agencies.

Research priorities:

- Build understanding of skills gaps in government agencies and companies in particular socio-cultural and political contexts.

- Analyse the effectiveness of community protocols and other capacity building approaches in preparing communities to engage meaningfully and negotiate agreements in extractive industry project contexts.
- Study effective mechanisms for funding civil society and community capacity building, including by companies, as well as good practice and ethics in relation to payment for participation.

5. Embed community engagement in the organisation and the value chain

Actions:

- Include community engagement, and the need to get it right, as a key non-technical risk in standard risk assessments.
- Provide clear statements by senior managers that all project personnel have a social responsibility, including subcontracted workers, backed up with mechanisms to ensure internal compliance and shared liability throughout the company and contracting chain.
- Include requirements for meaningful community engagement in major contracts, subcontracts and joint venture negotiations.

Research priorities:

- Study the experiences, challenges and opportunities of community engagement by contractors and subcontractors.
- Explore the realities faced by multinational companies in negotiating and operating as a joint venture partner, especially in cases where they are minority shareholders in state-owned companies, and in challenging socio-political contexts.

6. Build trust in the information-sharing processes

Actions:

- Develop and promote measures to increase public trust in impact assessment and other information-sharing processes, for example relating to the selection of consultants and inclusion of local voices and concerns in final documentation.
- Make transparency a key principle in community engagement processes and ensure that wider (top-down) transparency and accountability initiatives reach out to the local communities most affected by extractive industry operations.
- Provide resources to civil society organisations for them to read and analyse complex materials and help communities understand those materials.
- Seek endorsement of factual material by mutually agreed and trusted persons or institutions.

Research priorities:

- Study positive experience and promising ways to build trust around information, the most accessible and trusted formats for information, and the processes of sharing that information.
- Produce targeted case studies on community engagement processes in situations where trust may be very low, such as conflict and post-conflict situations.

7. Assess the effectiveness of processes and the value of outcomes

Actions:

- Involve communities in the co-design of engagement processes, including the definition of meaningful engagement and therefore what to measure and how to monitor the effectiveness of the process and the value of the outcome.
- Combine systems-thinking with context-thinking, by developing broad comparable systems indicators as well as site-specific indicators of success for community engagement processes, in collaboration with local stakeholders.
- Support independent monitoring and oversight as a way to ensure processes are fair, robust and legitimate, and are perceived as such by local communities.

Research priorities:

- Develop and test criteria for measuring both processes and outcomes of community engagement effectively.
- Conduct anthropological field research to address such questions as 'how was trust built in this situation?' and 'how satisfied were different parts of the local population with that consultation process?'
- Study the growth in usage of social media and how effective it has been in enabling communities to understand, monitor and engage with projects.
- Explore creative options for financing third-party oversight.

ONE INTRODUCTION

For extractive industry companies, getting stakeholder engagement right is a key element of securing a social licence to operate. Governments also have their own responsibilities to ensure communities are adequately consulted before decisions are made on extractive industry developments in particular regions (IFC, 2007a). There is plenty of guidance on how to engage with stakeholders (IFC, 2014, 2012, 2007b, 1998; OECD, 2014; ICMM, 2012). Yet there are still challenges around ensuring that public consultation and other forms of community engagement represent a constructive dialogue between companies, communities and relevant government departments, and ensuring that this leads to positive environmental and social outcomes for local populations and broader society.

Researchers and NGOs often call for processes, interventions and dialogue to be 'meaningful', emphasising that stakeholder engagement must not only look good on paper, but also result in tangible positive environmental and social outcomes (Wilson and Blackmore, 2013; Voss and Greenspan, 2012; Stammler and Wilson, 2006). The term 'meaningful' has now started to appear in standards and policy guidelines. For example, the UN Guiding Principles on Business and Human Rights (UNGPs) specifically use the term 'meaningful consultation' in the context of due diligence processes (UNHR, 2011:16–17):

Principle 18. *In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:*

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

The OECD Guidelines on Multinational Enterprises (2011) state that multinational enterprises should: "Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities" (OECD, 2011: 20). In April 2015, the OECD issued a draft of their due diligence guidance on conducting meaningful stakeholder engagement specifically for the extractive industries, to guide implementation of the OECD Guidelines (OECD, 2015). In the OECD document 'meaningful stakeholder engagement' is defined as "ongoing engagement with stakeholders that is two-way, conducted in good faith and responsive" (*ibid*: 9) (see also Table 1 for further definitions).

The International Finance Corporation (IFC) environmental and social performance standards are seen by many as a key benchmark for private sector performance. The IFC Performance Standard 1 on impact assessment and management refers to disclosure of 'meaningful' information to enable 'meaningful participation' of affected communities 'where applicable' (PS1, clause 30). Guidance Note 7 on indigenous peoples notes that: "companies have a responsibility to work with Affected Communities of Indigenous Peoples to ensure a meaningful engagement process, including on achieving FPIC where appropriate" (Clause GN23).

The World Bank Safeguard Policies are targeted at governments and set requirements on borrowing governments to address certain

environmental and social risks in order to receive Bank financing for development projects. Examples of such requirements include conducting an environmental and social impact assessment or consulting with affected communities about potential project impacts. The current Safeguard Policies OP 4.01 on environmental assessment and OP 4.10 on indigenous peoples both refer to 'meaningful consultation', defined as consultation where 'the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted' (OP 4.01). In 2012 the World Bank launched a review of its existing Safeguard Policies, developing a draft Environmental and Social Framework for review, with ten new Environmental and Social Standards (ESS).² There has been considerable debate around the draft, and in July 2015, executive directors announced a third phase of consultations on a revised (second) draft of the proposed framework, which were ongoing as this paper went to press.³

In response to the World Bank review, the BIC developed guidance on Environmental and Social Assessment and Management (ESAM), issued in advance of the World Bank's draft Framework (BIC, 2014). Drafted in concert with a range of civil society organisations, the BIC guidance includes a proposed standard for meaningful consultation (see Table 1 for slightly abridged definition).⁴ One of the key areas that the World Bank itself highlights in the first draft ESS they

produced for review is 'promoting meaningful consultation', which receives a much broader and deeper coverage in the new draft ESS than it previously had in the safeguards. This appears in relation to indigenous peoples (ESS7), cultural heritage (ESS8) and information disclosure and stakeholder engagement (ESS9). The World Bank provided its own proposed definition of meaningful consultation as part of the draft ESS9. The two proposals are presented in Table 1.

The two definitions have a number of areas in common, including their emphasis on conducting consultation early and throughout the project cycle, being inclusive and free from coercion, and providing timely disclosure of relevant and understandable information. There are also areas where they differ in emphasis. For example, the World Bank suggests that meaningful consultation is a two-way process (between the borrower and the community), while the BIC definition suggests it is a dialogue among all stakeholders. The World Bank definition stipulates the need for the consultation to be documented (by the borrower), which the BIC definition does not, although it does suggest the need for a stakeholder participation plan. The BIC proposal envisages consultation to include discussion of benefits (as well as risks and impacts) and explicitly mentions gender and disability in regard to inclusiveness. And while the World Bank suggests incorporating feedback 'where appropriate', the BIC definition is more explicit about the need to incorporate all relevant views into decision-making.

2. See: <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

3. *ibid.*

4. For full definition see: www.bicusa.org/issues/safeguards/environmental-and-social-assessment

TABLE 1: COMPARING THE BIC AND WORLD BANK PROPOSED STANDARDS FOR MEANINGFUL CONSULTATION

BIC PROPOSED STANDARD	WORLD BANK PROPOSED STANDARD
<p>Meaningful consultation is defined as a process involving all project stakeholders, affected peoples, including concerned NGOs, that is explained in a stakeholder participation plan and:</p> <ul style="list-style-type: none"> (i) begins early and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information understandable and readily accessible to affected people; (iii) is free of intimidation or coercion; (iv) is inclusive and responsive to marginalised groups, with attention to gender; (v) enables incorporation of all relevant views of affected people and other stakeholders into decision-making; (vi) includes persons with disabilities, and (vii) includes a comprehensive discussion of environment and social issues, including benefits. 	<p>Meaningful consultation is defined as a two-way process that will:</p> <ul style="list-style-type: none"> (a) begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise; (b) be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to project-affected communities; (c) incorporate feedback, where appropriate; (d) focus inclusive engagement on project-affected communities; (e) be free of external manipulation, interference, coercion, or intimidation; (f) enable meaningful participation, where applicable; and (g) be documented by the borrower.

Broadly the two definitions have much common ground that they also share with other emerging guidance. Yet while such efforts are being made to define ‘meaningful consultation’ and ‘meaningful stakeholder engagement’, it is not clear how successfully companies, governments and CSOs are implementing meaningful consultation and engagement processes in real project situations. IIED has long been concerned with exploring the challenges associated with implementing international standards of good practice at the local level. Building on previous work related to free, prior and informed consent (FPIC), company–community grievance

mechanisms, and citizens’ perceptions of extractive industries, and in the light of the considerable international interest generated by the UNGPs and the World Bank Safeguards Review, we decided to explore the notion of ‘meaningful consultation’ further.

The purpose of this project was to:

- Explore the current state of knowledge and practice on meaningful consultation. How ‘advanced’ is it? Do stakeholders feel it is well understood and carried out? What can and should it look like?

- Share some examples of what is happening on the ground – including capturing ongoing challenges, considering why things are still not working in some cases, and identifying emerging tools or approaches to improve practice.
- Enable representatives of different stakeholder groups to share their experience with one another.
- Identify whether there is a need for more in-depth research on this topic and in which specific areas.

We focused in particular on consultation with local communities, rather than the whole range of stakeholders related to a project; we covered a broader scope of industry activity than only due diligence (ie potentially the whole project life cycle); and we encouraged consideration of the roles of key implementing players, such as government agencies and industry contractors.

The paper is based on a relatively small sample of 25 interviews with civil society groups, NGOs, government and business, based in the UK, the US, France, Romania, Rwanda, Kenya and Kazakhstan. This phase also included a workshop with 15 students at Imperial College London in 2014, and a visit to Total in Paris in February 2015 where the preliminary research findings were discussed with a group of experts from that company. The initial findings were summarised in a background report that was shared with a mixed group of stakeholders who were invited to review the report and/or attend a half-day workshop at IIED's London offices on 2 March 2015. The workshop had 30 participants, from industry, civil society and the research community. The workshop followed the Chatham House rule

to allow for broad discussion and lesson-sharing between participants. Feedback on the paper was gathered at this workshop along with further insights on the topic of meaningful consultation. These were integrated into this publication.

The project does not aim to provide a comprehensive coverage of stakeholder views, but rather to illustrate different perspectives, capturing voices from diverse stakeholder groups, as a way to contribute to the ongoing debate on this topic. The material demonstrates the richness of existing experience, as well as the lack of agreement on certain aspects, such as terminology. Our target audience includes those trying to understand current practice, challenges, gaps and opportunities relating to meaningful community engagement. They may be business, government or civil society practitioners involved in implementing international good practice standards; stakeholders involved in public debates on social impacts of extractive industries, including debates around FPIC and the World Bank Safeguards Review; and audiences looking to address knowledge gaps, including funding bodies, NGOs and research organisations.

The paper draws on current literature, the authors' field experience and the views and feedback from the interviewees and workshop participants. Section 2 explores what makes community engagement meaningful; Section 3 explores seven priority areas for meaningful consultation, focusing on: (a) current issues and challenges; (b) good practice experience; and (c) how stakeholders are, or could be, taking good practice further. Section 4 offers some concluding remarks and recommendations for further research and action.

TWO

WHAT MAKES COMMUNITY ENGAGEMENT MEANINGFUL?

In recent years there have been considerable improvements in guidelines and advances in debates on community engagement. There is more evidence of good practice implementation in some areas, and increased support for indigenous groups' rights to FPIC. Yet our respondents observed that community engagement processes still frequently 'go wrong' or get very messy. Community dissatisfaction with a consultation process that people perceive as not being meaningful can lead to opposition or conflict, and projects stalling or failing to secure regulatory approval. Alternatively, projects go ahead against community wishes or without sufficient discussion of the implications, and local people may suffer considerable anxiety, negative social and environmental consequences, or the feeling that they have no influence over decision-making.

While the terms 'meaningful consultation' and 'meaningful stakeholder engagement' are now appearing in international standards and being used more frequently in the discourse of international good practice of extractive industries, there appears to be a lack of a shared understanding of what they mean in practice. There are debates over the terminology (eg consultation, engagement or consent?) and how success is viewed and evaluated.

2.1 CONSULTATION OR ENGAGEMENT?

In general, our respondents differentiated between 'consultation' as a process led by government or industry with a particular goal (eg a specific project or plan to discuss) and 'engagement', which refers more to the process of building ongoing relationships and trust with communities (and may start in the earliest stages of exploration and pre-exploration, extending throughout the life of a project). In different ways, respondents pointed towards a spectrum for engagement with local communities, where at one end – the weaker end – companies 'inform' and 'consult with' communities, and at the other – the stronger end – communities are involved in discussions on costs and benefits, and empowered to take part in finding joint solutions and making mutual decisions, for example on benefit-sharing and future development options. While we started our project by exploring the term 'meaningful consultation' (and used that term in our interview questions), we believe the term 'meaningful community engagement' better represents our aims, as it incorporates targeted public consultation as well as wider engagement with local communities. We therefore use both terms in this paper.

“We as an organisation need to be structured in a way that we are able to integrate stakeholders’ opinions into our strategy and decision-making; change the organisation to respond to stakeholders’ opinions.” (Industry respondent)

2.2 CONSULTATION OR CONSENT?

When questioned in our interviews, respondents had different views on how ‘meaningful consultation’ relates to FPIC. Some felt that the two concepts were close in meaning and that this was helpful. For example, an expert from North America working with companies and NGOs on how to implement FPIC observed that, in practice, all the elements of FPIC are also key principles for meaningful consultation, though they were not talking about ‘meaningful consultation’ as such within those NGO–business discussions on FPIC. A workshop participant noted that FPIC might be a helpful term for implementing meaningful consultation because it is defined in international standards and guidelines and it is therefore clear what it means.

For one NGO respondent in Kenya, meaningful consultation is synonymous with FPIC. Thus, consultation is meaningful if communities are informed about a project on time (before the project begins); if information is freely and appropriately given; and if, based on an analysis of this information, communities have the opportunity to give (or withhold) their consent for a project to go ahead. The Kenyan respondent added that while communities should be allowed to say ‘no’ to a project, practically speaking the need to have the ‘no’ option is often (though not always)

more about establishing an effective negotiation process. However, a consultant working on FPIC suggested that even if meaningful consultation and FPIC are close in practice, groups advocating for FPIC implementation may view ‘meaningful consultation’ as a ‘weaker’ principle as it does not make explicit the idea of community consent.

Respondents discussed the challenges involved in implementing a consent process, and these also provide insights for our study. These challenges include ensuring that you are eliciting consent from the ‘right’ people; that communities really know what they are consenting to; and both sides understand that impacts and projects change over time (and thus ‘consent’ will not be a one-off event). An industry respondent suggested that terms such as ‘consent’ should be avoided since there is often no agreement **within** communities in regard to a project, making the consent process problematic. Respondents noted that the terminology around ‘consultation’ and ‘consent’ can be loaded, with competing understandings and worldviews leading to circular discussions. An industry respondent suggested that the term ‘meaningful consultation’ is more business-friendly than ‘consent’ because it is ‘less political’. Industry respondents noted that industry is moving in the direction of taking ‘meaningful consultation for broad community support’ as the favoured term (in countries where FPIC is not specifically required by law).

2.3 PROCESS OR OUTCOME?

A further area of debate among our respondents was the extent to which it is the **process** or the **outcome** of that process that make consultation or engagement 'meaningful'. (For example, can you have a meaningful consultation process if the outcome is not what people wanted?) Several industry respondents recognised the obvious links between achieving trust – an outcome – and the 'quality' of the process used to achieve trust. For them, a process that is perceived as fair is more likely to result in a good quality relationship between companies and communities – and thus be more meaningful.

Respondents (from industry and civil society) noted that community engagement is "not just information-sharing". It is also important to elicit communities' input on the way things should be done, to help government and industry to adapt their plans to minimise negative impacts, and enhance positive opportunities. A good process will help communities understand how they will fit into project plans; let people participate in open discussions; understand how they can negotiate, including "when to fight and when to talk", as one

respondent put it. Yet, as one consultant noted, a 'good process' does not guarantee a positive outcome or positive change for communities. Similarly, a consultant based in Kazakhstan observed that from the community perspective the outcome is critical: if companies appear to listen (a good process) but subsequently fail to do anything with the feedback, a process will appear not 'meaningful' but 'fake'.

Despite the obvious importance accorded to outcomes, however, good practice guidelines and indicators of success tend to focus more on the process. This raises the question of how outcomes can adequately be taken into account and evaluated.

In Box 1 we consider what elements of community engagement would be needed to make **processes** meaningful, based on our respondents' suggestions. Box 2 illustrates our respondents' views on the desired **outcomes** of a community consultation or engagement process. Some are measurable, eg if this relates to a concrete agreement between the parties. Others, such as building trust, are less easy to measure reliably (see also Section 3.7).

“Both outcome and process are important. We don't always get the desired outcomes and process might not be ideal. But this is the only way to establish proper communication – a two way street.” (NGO respondent)

“Meaningful consultation is about understanding the context of a project and local peoples’ way of life, so as to understand the potential impact of the project on their lives.

This allows you to place value on that, adapt your plans where possible, and ultimately ensures you can continue to operate both in the short and the long-term.”

(Industry respondent)

BOX 1: SUGGESTED WAYS TO MAKE A CONSULTATION/ENGAGEMENT PROCESS MEANINGFUL

- The government has set the legal framework for public consultation processes – providing clarity and certainty for all parties
- The community engagement process involves ensuring that staff have the skills and capacities to implement consultation in a meaningful way: people in key positions in government or companies understand the community context, can conduct a consultation process sensitively, and can ensure the process results in positive change
- The process is representative and inclusive, and perceived as fair
- The process is an ongoing, rather than finite, relationship
- Consultation/engagement is a two-way or multi-way process; it may be a process of negotiation leading to an agreement between parties
- The scope of the consultation/engagement process goes beyond management of risks and negative impacts. It also includes discussions on costs and benefits; finding joint solutions and making joint decisions about future development
- The process includes a way for the company (or government department) to integrate stakeholders’ opinions/the results of consultation/engagement into its decision-making processes
- The budget for the consultation/engagement process reflects that government/industry understands that up-front investment in a robust process will have long-term benefits; and that community engagement is a continuous investment
- The process should be ambitious and seek to ‘push the boundaries’ of good practice

BOX 2: DESIRED OUTCOMES OF MEANINGFUL COMMUNITY ENGAGEMENT

For communities

- Enabling a community to develop its own vision and to plan for its own future development in the context of an extractive industry project (starting at pre-approval stage, where the question of issuing exploration licences remains open)
- Helping local people to understand a project and become more aware of a company's plans and how they might affect the community (positively or negatively)
- Creating a space, building trust and relationships and agreeing terms for ongoing dialogue and negotiation over costs/benefits/impacts
- Enabling community consent to be elicited for a project and maintaining consent over time
- Enabling communities to secure their rights; rebalancing power between stakeholders
- Developing a concrete agreement, joint strategy, solutions and mutual decisions, for example on benefit-sharing, job creation and future development options
- Resolving issues and community concerns effectively; ensuring community feedback is incorporated into corporate/government policy and practice

For companies

- Understanding the context of a project; keeping track of public perceptions/opinions/events
- Building trust and understanding with the community, to enhance communication and increase acceptance of a project (social licence)
- Agreeing terms for ongoing dialogue and negotiation over costs/benefits/impacts (which may or may not lead to 'consent')
- Eliciting, and providing useful feedback on, inputs into project planning

- Achieving a particular objective in the course of project implementation, such as agreement on the siting of a facility or pipeline
- Avoiding conflict and other sources of delay and loss, and time wasted on 'fire-fighting'; establishing effective mechanisms to mitigate negative impacts/maximise opportunities
- Preserving company reputation in the eyes of the public and government; being able to access resources and opportunities in the future

For government

- Ensuring security, economic growth and positive development outcomes for the population, including adequate revenues from a project for the national/local budget
- Understanding (and meeting) local community needs as well as protecting the environment
- Facilitating trade-offs and difficult choices in the course of making development decisions and during project implementation; allowing government to be impartial
- Enhancing public understanding, ensuring debates are well-informed and not 'over-emotional' (see below) or politicised to the detriment of adequate discussion or fair representation of interests
- Preserving own reputation; being a neutral and fair 'arbiter', perceived by all stakeholders as following due/fair process; securing votes in the future
- Informing a process of harmonising legislative, business and community regulations
- Ensuring effective enforcement and monitoring of business–community partnerships

Not all the points in the above boxes were agreed by all respondents. One issue that was hotly debated at the workshop was the question of **emotion** – following the suggestion that a consultation might be more effective if it were less emotional. One argument was that sometimes over-emotional debates, especially when based on a poor grasp of the actual facts, or ‘fired up’ by the media or NGO campaigns, can undermine a more meaningful and constructive discussion around the full facts of the project. On the other hand, a number of workshop participants felt that companies and governments need to accept that public engagement on extractive industry projects is often highly emotional, and that staff who are involved in consultation processes need to develop their ‘soft skills’ and ‘emotional intelligence’ in order to engage effectively. Sometimes a more emotional engagement, for example with a distressed or angry villager who has lost access to their traditional lands or resources, can get a point across to a government or industry representative in a way that a purely factual discussion may not. One workshop participant from industry suggested that company staff can only understand these issues and be fully prepared if they have actually taken part in an emotional encounter with local communities, been humbled by that experience, and been forced to re-think their own positions.

Another area where people had different views was around negotiation, and whether negotiation between parties (rather than just discussion) is needed to make engagement meaningful. Several respondents referred to negotiation as a significant area of consultation, although not all agreed on the extent to which there is an overlap between consultation and negotiation. Ultimately consultation with communities is likely to take place in different ways at different levels, depending on the desired outcomes. One level is that of in-depth engagement with community members where information can be exchanged freely, questions answered and issues raised and resolved. Another level is that of negotiation, for example relating to FPIC or a benefit-sharing agreement (see Section 3.7).

Some industry respondents suggested there was a need to recognise the limits to what even a good consultation process can achieve and the extent to which communities themselves can in fact influence decisions and outcomes. Industry respondents also observed that companies need to be clear with stakeholders about what can and cannot be influenced as a result of engagement, as some aspects of a project cannot change for technical or political reasons, and stakeholders may be frustrated if they expect more change than is in fact possible.

THREE SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY ENGAGEMENT

In this section, seven success factors for meaningful community engagement are discussed. These were identified based on the interviews, the workshop feedback and discussions, current literature and the authors' professional experience. For each success factor, the discussion focuses on: (a) current issues and challenges; (b) good practice experience; and (c) areas where existing good practice could be expanded and enhanced still further.

BOX 3: SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY ENGAGEMENT

1. Clarify and align government and company roles
2. Understand the local context at all levels
3. Start early with a long-term perspective
4. Embed community engagement in the organisation and the value chain
5. Build capacities and prepare well
6. Build trust in the information-sharing processes
7. Assess the effectiveness of processes and the value of outcomes

3.1 CLARIFY AND ALIGN GOVERNMENT AND COMPANY ROLES

A key question to consider from the outset is how to balance government and company roles in public consultation and community engagement. In practice, government agencies and companies frequently need to work together, and their roles are often intertwined during the entire period of project implementation. Yet the role of governments is often underestimated. There is plenty of guidance on how companies should be consulting and engaging with their stakeholders, and sometimes this results in people overlooking the responsibilities of the government to engage with communities – often at an earlier point in industrial development, before specific companies are involved. For example, while the UNGPs call for companies to engage in meaningful consultation as part of their due diligence processes, they do not mention the government responsibility to carry out meaningful consultation prior to decisions being made on a particular industrial development (as is made clear in relation to FPIC, for example, according to the ILO Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples).⁵

5. ILO, 1989.

Governments have an important regulatory function. National legal regimes regulate both industry and natural resource development, and establish entry points for community engagement at national and local levels. Respondents noted that environmental impact assessment (EIA) regulations provide an important foundation and driver for public consultation, but in many cases the implementation and enforcement of these regulations are inadequate, with very little guidance or specific requirements relating to **how** consultation should take place. The strength of government institutions and capacity to consult is particularly in the spotlight as a result of the World Bank's review of its Safeguard Policies. These **are** targeted at governments and include provisions on community consultation. Civil society organisations are concerned that the new draft policies shift core accountability and responsibilities for compliance with the safeguards from the Bank to borrowing countries. The BIC argues that while it is important to foster national ownership and support developing countries' own systems for managing environmental and social risk, the shift of safeguards responsibilities must be more gradual and start with borrower capacity building and strengthening – or risk a governance gap where neither international lenders nor national governments are protecting people's rights.⁶

Workshop participants noted that 'government' exists in many forms at different levels. There may be conflicts between national, regional and local levels of government, where people may have different perspectives on a development,

and different things to gain or lose. The term 'government' might be used to refer to politicians, legal or administrative civil servants, various ministries, the negotiators of investment contracts, regulators, permit-givers, or the judiciary. An example discussed at the workshop was a judge upholding or overturning a permitting decision that has been challenged in the courts. The judge needs to decide whether a consultation has been meaningful or not, and frequently there is insufficient guidance on how to make that judgement. In practice a decision might depend on where a judge is from (eg the local area or the capital), and the extent to which s/he is familiar with the context.

Much depends on government action at the subnational level. In Peru, for example, the regional government stepped in to address a conflict between Anglo American and a local community (Box 4). This involved establishing a *Mesa de Dialogo* (or 'dialogue table') to allow multiple stakeholders to talk through their concerns.

In Kazakhstan, social legislation has strengthened local government's role and improved requirements for public consultation by companies. Nonetheless, respondents believe that more could be done to legislate for better consultation processes and information-sharing. For example, in 2000 Kazakhstan ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998),⁷ yet several respondents from different stakeholder groups in Kazakhstan noted that

6. See www.bicusa.org/issues/safeguards/#Concerns

7. See www.unece.org/env/pp/welcome.html

BOX 4: COMPANY-GOVERNMENT COLLABORATION OVER A WATER CONFLICT IN PERU

In 2010, Anglo American decided to take forward its Quellaveco copper project in an arid region in the south of Peru. The company felt it understood the community and was shocked when their receipt of a 'water availability permit' triggered a public demonstration, with the central government cancelling the permit two days later. The company planned to take water from the local river basin for the mine, which local households and farmers feared would have major negative impacts. To address this conflict, the regional authorities proposed a *Mesa de Diálogo* – or 'dialogue table' – to bring together stakeholders, from town council representatives to water users' associations and farmers' organisations. Some company staff and local organisations were sceptical about what this could deliver, but the company and around 60 local organisations agreed to take part, while the project was put on hold.

The process took 18 months, involved 70 meetings and encountered several challenges; including a re-issue and revoking of the water permit either side of presidential elections in 2011. In July 2012, Anglo American received the permit, having made major changes to the mine closure plan and local enterprise development, as well as increasing water supply for farming activities. In a case study in its 2012 annual report, Anglo American reflects that, as the company had switched from exploration into project-building mode, they had stopped engaging effectively externally. The company had not listened enough to what people wanted or explained the project and its risks. The dialogue enabled space to listen and understand different perspectives. In sharing the experience at a 2013 conference in London, one Anglo American staff member commented: "The formal permitting and informal licence to operate have merged and are indistinguishable".

Sources: Anglo American, 2012; Elliot, 2013

implementation of the principles of this convention should be strengthened. A representative of a Ministry in Kazakhstan, who was interviewed for this project, also emphasised the importance of the role of local governments in consultation processes: "Local governments need to be informed and they need to make sure people understand and can react." A civil society

respondent from Kazakhstan emphasised that if local and national government agencies are not supportive of company consultation processes they will stall and communities will not be empowered enough to engage meaningfully. Box 5 illustrates local government support for multi-stakeholder dialogue processes in Kazakhstan.

BOX 5: LOCAL MULTI-STAKEHOLDER COUNCILS IN KAZAKHSTAN

In Kazakhstan public stakeholder councils are set up by local government and civil society, allowing NGOs and local activists to sit down with local government and industry to discuss issues particularly relevant to the local context, such as social investments, environmental impacts and local development. They build on existing networks and processes involving local governments and communities. For example, a regional governing body, or *Akimat*, in one of the oil-producing regions, Mangistau, established a public stakeholder council, initially to discuss oil company social investments in the region – an area of company spending that is of direct benefit to communities – yet it is particularly vulnerable to corruption and nepotism and is typically poorly monitored and lacking in transparency. The Mangistau public stakeholder council met periodically (initially about four times a year, then twice), with information disseminated in advance of the meetings. This allowed CSOs to discuss in advance and

form positions that they then communicated to the councils. There was a mutually agreed action plan. Meetings on specific topics could be called by any stakeholder but had to be agreed upon by all participants. This practice is largely dependent on political will and available resources.

A key challenge is ensuring that local governments continue to support this practice and that national governments support local governments in doing so. A ministry representative from Kazakhstan commented that the stakeholder councils are a great idea, but very difficult to sustain over time: “They require a lot of work and financing. Somebody has to monitor all that and sometimes there is not enough capacity. But within government – everyone wants these initiatives to succeed.”

Sources: interviews with a consultant, an NGO leader and a ministry representative in Kazakhstan

A consultant interviewed for this project suggested that stakeholder council models work when they are not establishing a new group that potentially poses a threat to the authorities. If the purpose is communication and resolving issues, then such groups can be effective, but if there are expectations of getting involved in benefit distribution, there needs to be a process of managing expectations and maintaining transparency around the decisions to avoid conflicts of interest and to ensure the process of benefit distribution is perceived as fair.

Workshop participants discussed the challenges of governments fulfilling their role in cases where there are complex politics, vested interests for and against a project, and low levels of faith on the part of citizens or companies in the impartiality and accountability of government. The IFC guidance for companies on the ILO Convention 169 highlights some of the heightened risks that companies face if governments have not met their own obligations under such conventions

(IFC, 2007a). A lack of co-ordination and communication between government and industry on the matter of community engagement might also pose a risk that international financial institutions and other investors should be sensitive to.

Workshop participants also agreed that more work needs to be done to understand the relative roles of government and industry in the most difficult situations. In cases of weak states, oppressive regimes or violent conflicts, the rules of community engagement are likely to be entirely different, and may depend on military support, stronger third-party involvement or very limited engagement. In a conflict situation, for example, there may be a need to involve UN peace builders in engagement processes. Outcomes of such processes may be undermined or revised in the longer term as the state becomes stronger or more/less open and so will require careful and long-term monitoring and oversight.

3.2 UNDERSTAND THE LOCAL CONTEXT

Guidance on community engagement increasingly emphasises the importance of understanding the local context (IFC, 2014; ICMM, 2015; OECD, 2015). As expressed by one of our industry respondents, the key to making community consultation meaningful has a lot to do with understanding the 'intangibles'; ie the factors that are specific to the socio-economic, political, cultural and geographical context of a project. The respondent added that guidance targeted to help companies get to grips with these intangibles could be really helpful. It is the context-specific factors that shape a project's impacts and determine how these will affect different people in the communities in different ways, including which issues are high-risk (eg resettlement) and which are not (eg minor noise impacts), and what opportunities there are to enhance project outcomes.

“40 per cent of your community engagement can be shaped by generic guidelines, standards and toolkits, but 60 per cent of it needs to be tailored to the context.”
(Industry respondent)

It is already accepted practice for companies to undertake stakeholder mapping from the early stages of a project, to identify who to engage with and how to engage, with what frequency and what intent. However, the effectiveness of this exercise depends on what companies do with the information, how the identified stakeholders are engaged, and how their feedback is assessed and used. One of our respondents – an industry consultant – emphasised that tailoring project plans to the context also requires the consultants who are developing this documentation to have effective communication with stakeholders. This respondent complained that project plans often look as though consultants have cut and pasted previous work, and they fail to provide detail on how the plan was tailored to the preferences of affected communities and other stakeholders. As a result, stakeholders are not given clear guidance on when and how they can participate. A further point is that companies need to ensure their own staff are engaged in public consultation, rather than outsourcing it to external consultants. Without the direct involvement of company staff from the early stages, it is more difficult to institutionalise the relationships built between the community and the project during that consultation process.

It is critical for staff who are working in the field with local communities – such as community liaison officers (CLOs) – to have a good understanding of the local community context. In many cases these company representatives come from the communities themselves; in other cases they may be selected because they have other skills and qualities. The selection of company representatives to engage with communities itself is an important decision. One workshop participant gave the example of a project where initial engagement was by engineers and foreign

BOX 6: THE BERGER INQUIRY

The Mackenzie Valley Pipeline Inquiry, also known as the Berger Inquiry, was launched in 1974, on the request of the Canadian government. Justice Thomas Berger led a commission to investigate the social, environmental and economic impact of a proposed gas pipeline through the Yukon and the Mackenzie River Valley of the Northwest Territories. The inquiry took three years, cost C\$5.3 million, and produced over 40,000 pages of evidence (283 volumes). Berger took his commission to communities across the Yukon and the Northwest Territories, including all communities of the Mackenzie River Valley, and the inquiry is particularly noted for the voice it gave to the aboriginal peoples who would be affected by the proposed project. The report '*Northern Frontier, Northern Homeland*' was published in 1977 and recommended that no pipeline be built through the northern Yukon at

all, and that a pipeline through the Mackenzie Valley should be delayed for ten years. One commentator noted: "Berger wanted everyone to take a deep breath so those for and against the project could attend to land claims and environmental and social concerns". As it turned out, the pipeline construction was delayed for more than ten years. It wasn't until 2011 that the C\$16.2 billion Mackenzie Valley pipeline project was finally approved – following a further in-depth consultation process – to carry natural gas from the Beaufort Sea 1,200 kilometres to the Alberta border to link with southern markets.

Sources: Fitzpatrick *et al.*, 2008; Nuttall, 2010; www.cbc.ca/news/business/mackenzie-valley-pipeline-37-years-of-negotiation-1.902366; www.cbc.ca/news/canada/pipe-dreams-the-mackenzie-valley-and-the-national-railway-1.1033239

company staff, who lacked local credibility, a consistent presence, and understanding of the social context. As a result, they failed to engage local people effectively, which was seen as a factor contributing to a subsequent conflict.

The need to understand the context applies equally to governments. It is not a given that government employees (generally based in national or regional capitals) understand local issues in their own country, especially not in some of the outlying regions where extractive projects often take place. One government respondent suggested that civil servants involved in decision-making should spend more time in the field, learning about the local context in order to make wise and effective decisions on resource management. Unfortunately, spending time in the field is something that is often neglected or cut back when budgets are tight.

In the 1970s, the Canadian government carried out one of the landmark public consultations in extractive industries' history in advance of making a decision on whether to lay a gas pipeline across regions of northern Canada (see Box 6). The

consultation provided an in-depth understanding of the local context and led to a decision not to construct the pipeline across one territory, while applying a ten-year moratorium on the pipeline plans overall.

Understanding to what extent project proponents have investigated and understand the local context will provide lenders and investors with assurance regarding the levels of community support for an investment project. As such, depth of field experience and time spent with communities by managers and operational staff could become a requirement and indicator for international financial institutions and other public and private investors who want to ensure investment security and a positive development impact from their investment.

Workshop participants again emphasised the need to understand more about particularly challenging contexts such as conflict and post-conflict situations, and how these challenges have been dealt with in similar situations in the past (if at all). An industry respondent highlighted the need to fully understand the risks to stakeholders

during public consultation and the importance of ensuring it takes place in a safe and protected manner especially in sensitive environments. For example, one industry representative pointed out that in some extreme cases it is impossible to engage with the local community in the regular way, and the only local community 'representatives' they could engage with were local workers on the project.

3.3 START EARLY WITH A LONG-TERM PERSPECTIVE

Both the BIC and World Bank proposed standards for meaningful consultation recommend that it should 'begin early' (see Table 1). Some of our industry respondents suggested that it would be useful to have more specific guidance on **how early** to engage with communities, and what this should look like in practice. Some respondents suggested for example that it should start during exploration and before a project begins, so that it is forward-looking, and to develop a strong understanding of the context and build trust with the communities (which takes time).

As noted in Section 3.1., it is often the responsibility of the government to prepare the ground before companies are brought in, for example to discuss plans for potential resource development at the pre-exploration phase. Strategic environmental assessments (SEAs) can provide this function, and are generally carried out by governments to assess policies or programmes, but also in some cases applied to projects. Public consultation in SEAs can be challenging, but good practice requires the analysis of social issues, including stakeholder mapping, participatory analysis of the social context and socio-economic trends, multi-stakeholder dialogue (for example using scenarios), and inclusion of the voices

of vulnerable groups (Dalal-Clayton and Sadler, 2005).

Industry respondents observed that in many cases extractive companies are in the same place for many years, and community engagement should be seen as a continuous investment. It is therefore important to think about longer-term opportunities from the outset, particularly in relation to job creation. Respondents noted the importance of companies perceiving communities as 'long-term partners', and 'as assets rather than risks'. Others questioned what it actually means to be 'partners' in the long term, and felt that this notion also needs some more concrete and detailed definition in the same way as 'meaningful consultation'.

Benefit-sharing agreements or impact and benefit agreements (IBAs) between companies, governments and indigenous/local communities provide an opportunity for communities to take part in dialogue and negotiation around project decisions, particularly relating to environmental impacts, resettlement proposals and community development support. Impact and benefit agreements are now standard in Australia and Canada (Limerick *et al.*, 2012; Sosa and Keenan, 2001). In Greenland, they are required even at the exploration stages of oil and gas development (see Box 7). In Nigeria, an approach driven by companies known as the Global Memorandum of Understanding (GMOU) has established models of community–company partnership, whereby multi-stakeholder committees ensure a greater community voice and shared ownership of decision-making around social investment projects, through facilitated dialogue (Scheltema, 2013). The signing of such agreements alone is not a guarantee of successful outcomes, and such processes can be criticised for being inequitable. Standardised methods for measuring

the outcomes of such agreements are yet to be developed (*ibid.*).

Long-term thinking and relationship building can be challenging in the earliest stages of project development, and yet are increasingly understood to be very important. Junior companies are often involved in the earliest exploration activities, project planning and development, but often lack the resources and skills for complex stakeholder engagement activities. The IFC publication 'A strategic approach to early stakeholder engagement'¹ provides guidance targeted specifically at junior companies in carrying out an early strategic stakeholder engagement (or ESSE) programme that is "graduated, cohesive and achievable" (IFC, 2014: 4). The guidance highlights the fact that a junior company is often looking for further investment, or for a company to buy it out (following the exploration activities), and argues that "a robust initial ESSE programme can substantively build asset value and enhance company branding and value to shareholders, investors, and potential buyers" (*ibid.*: 2).

Early engagement challenges identified by respondents and workshop participants include the fact that in the early stages there are many unknowns; companies (especially juniors) have not always invested in social staff on the ground by this time; and financial resources can be limited. A consultant respondent argued that simply "having unknowns" should not be used as a reason not to engage. At this stage it is about building trust and goodwill, listening to concerns, expectations and ideas from communities and taking those into account when designing the project. Industry respondents emphasised however that licensing and other business negotiations are often highly confidential, placing real limits on how early companies can engage.

Industry respondents also noted that it is often difficult to project the future and potential longer-term impacts in discussions with communities (for example, the longer-term indirect effects of a growing extractive industry on pastoralism as a livelihood activity in Kenya). One industry respondent noted that an industrial activity might have indirect social impacts, for example if an influx of migrant workers leads to increases in local prostitution or alcohol abuse. It is difficult to project the long-term as communities often cannot envisage what that looks like because they have not had similar experience in the past. Moreover, how the situation evolves depends on many different factors, including how the community itself responds to change. A key challenge is how to present complexity and uncertainty about the future in accessible ways to communities.

An issue increasingly being discussed in the context of the oil price collapse of 2014 and 2015 is the challenge of early engagement if there is a risk that a company subsequently pulls out due to commodity price drops or bankruptcy. Box 7 illustrates the efforts made by Cairn Energy to engage with local communities during exploration in Greenland, as required by Greenlandic law, despite having no guarantee that exploration would lead to production.

The IFC (2014) guidance on early stakeholder engagement acknowledges that companies are often reluctant to engage early with communities precisely due to the risk of a project not progressing to production. Yet the guidance emphasises the importance of interacting early, demonstrating consistently transparent behaviour and managing expectations from the outset. They recommend that companies have an exit strategy in place and ensure that "an exit is handled with the same care as entry" (p.44), including senior management involvement in

THREE SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY CONTINUED

BOX 7: CAIRN ENERGY IN GREENLAND: A COMMUNITY AGREEMENT IN UNCERTAIN TIMES

Cairn Energy carried out eight offshore oil drillings in Greenlandic waters between 2010 and 2011. The company entered into an impact and benefit agreement (IBA) with the national government regulator and the municipalities in each project area, as required by Greenlandic law. The IBA detailed plans for local employment, training and skills development and reducing stress on social services. Performance against the IBA has been monitored and published online.

By 2011, Cairn Energy's workforce was about 10 per cent Greenlandic and over 100 Greenlandic organisations were involved in supplying £38 million of goods and services. The company trained local workers and provided capacity building for staff of the national oil company, Nunaoil. They set up a £158,000 fund for English language training in 2010; a £316,000 fund for technical skills development in 2011; and a grant fund of £47,000 to support culture and youth sport.

Cairn Energy has held public meetings in several settlements close to their explorations in Baffin Bay, publishing the findings online. These highlighted the concerns of local hunters and fishermen about the effect of drilling on marine mammals and the potential impacts of an oil spill, and local anxieties about lack of local skills and employment opportunities for their young people.

In 2013, together with Nunaoil and other international companies operating in the Baffin Bay area, Cairn Energy carried out a collaborative social baseline study to inform environmental and social impact assessments. Yet Cairn Energy failed to find any oil. And following the oil price crash of 2014, oil exploration stalled in Greenland, with Statoil, GDF Suez and Dong Energy all returning exploration licences in January 2015. Despite the efforts of Cairn Energy and other companies to engage with communities and fulfill their legal obligations, the price of oil has led them to leave the region and the communities they were engaging with, at least for the time being.

Sources: Wilson (2015); www.cairnenergy.com

announcing stoppages and closures. A key incentive for a company to get their exit right is that if circumstances change they may want to return in future.

Cases such as that of Cairn Energy also indicate that it is difficult to rely on companies alone to build relations with communities and support development programmes in contexts where their long-term presence is not guaranteed. While the Greenland case study above illustrates the

positive effect of government regulation requiring social baseline studies and IBAs even for exploration, there is also a role for government in mitigating the boom and bust effects of company involvement in a region. This might include setting up joint company funds for social investment, contributing government resources to these funds, and ensuring that spending is spread over several years, rather than spending large amounts in some years leaving nothing to be spent in subsequent years.

3.4 BUILD CAPACITIES AND PREPARE WELL

Capacities may be lacking in government, companies, civil society and communities. All of these gaps need to be addressed if consultation is to be meaningful. Government departments, especially in new resource economies (eg, Kenya, Greenland), are often poorly prepared for major extractive industry development. There may be weak legal structures and guidelines, ministries may not work together effectively, the industry may be growing faster than the development of legislation, and there may be a lack of effective policies and institutions to implement the policies. Governments may lack the skills and the legal expertise to negotiate effectively with companies, including in relation to communities, local jobs and benefit-sharing. Capacity building may need to extend to all the areas of 'government' highlighted in Section 3.1.

Even in more experienced resource-extraction regions and stable democracies, governments may lack the knowledge to adequately represent communities or manage a sensitive consultation process; or indeed to make policy decisions that effectively reflect local needs and realities. A government representative commented in an interview for this project that people in government need to be allowed to do "engagement, not just consultation". By going out into the field and getting to know people, policy analysts and decision-makers will gain experience to inform policy decisions that reflects the needs of the people and their realities. Workshop participants also highlighted the need for donors to have a less fragmented approach toward

capacity building, for example in the context of the new hydrocarbon-producing countries of East Africa, which have attracted a lot of donor interest.

Consultants and NGO respondents observed that while some industry staff have sophisticated understanding and readiness to go beyond good practice on community engagement, many companies lack that understanding and are getting basic issues wrong, such as failing to ensure that meetings are held at appropriate times so that people can attend. Companies need to invest not only in training for company staff and contractors, but also in hiring CLOs and other staff with an appropriate background (eg social science qualifications or prior community-based work, or in-depth knowledge of the particular local community, for example if they are from that community themselves). Workshop participants highlighted the importance of executive teams having 'frontline' experience, so that they understand the implications of the decisions that they make, as well as the full significance of reports from the field. They also emphasised the need for staff to learn from their mistakes. Staff need to be able to engage with emotional discussions, which can improve relations and dialogue in the short and long term (see Section 2.2.).

Corporate training workshops are now being designed with a focus on community engagement skills. An example is the training led by Synergy Global in sub-Saharan Africa.⁸ Workshop participants suggested that training workshops for staff to deal with very tough and emotionally challenging social situations could be designed along the lines of safety workshops

8. www.synergy-global.net/r/training.php

THREE SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY CONTINUED

where people are put through difficult safety challenges. However, this would not be an adequate substitute for time spent in the field in direct contact with communities. A workshop participant also suggested that companies need to be able to resolve internal disagreements on the best approach to community engagement, as internal conflict often inhibits resolution of issues externally.

Capacity building is also important for communities. Frequently they are expected to engage on complex issues, without having had the chance to discuss these within the community, which would help people develop their own opinions and expectations on a particular project and fully understand the implications. Respondents agreed that community members need to be well-informed and well-prepared before entering into a consultation process, and require organisational and negotiating skills, and knowledge about the extractive industries (impacts and technologies); awareness of the law and rights; understanding of processes such as impact assessment and areas where public consultation is required and what they might expect from it. For example, Centro Terra Viva, a research and advocacy NGO in Mozambique, trains community paralegals – people without higher education who have received short-term, intensive training on legal issues – to work with

people in their communities to understand their legal rights in the face of gas development and to support their participation in consultation processes (Salomão, 2015).

A consultant from Kazakhstan explained how small-group consultations with different stakeholders were effective in building local people's preparedness when held prior to a large town hall meeting in Kazakhstan. The results of the small group sessions largely determined the town hall agenda and it was managed in such a way that participants could trace their inputs and organisers could assess and prioritise issues based on preliminary feedback. This respondent observed: "If it is just a town hall meeting without the pre-meeting process to build awareness and capacity, the discussion is less valid or meaningful".

Communities may also wish to develop a collective position in regard to a project, especially if they are expecting to build a long-term partnership with a company or government agency, or negotiate an IBA, which may or may not be part of an FPIC process. One way to build collective community understanding and/or a position vis à vis a particular project or type of resource development is to prepare a so-called 'community protocol'. Community protocols are traditionally held orally, and there is an increasing

“You can't go into a community and expect them to understand mining supply chains, commodity pricing and so on. Meaningful consultation presupposes a common ground to start with. This is not possible if those on either side of the table are poorly prepared.” (Industry respondent)

interest in preparing these in a (written) form that is acceptable to outsiders (Swiderska *et al.*, 2012). Community protocols can be defined as “charters of rules and responsibilities in which communities set out their customary rights to natural resources and land, as recognised in customary, national and international laws” (*ibid*: 26). For example, the Centre for Indigenous Knowledge and Organisational Development (CIKOD) in Ghana helped the Tanchara community in the upper west region of Ghana to develop a community protocol when faced with gold mining activities that threatened their natural resource base (see Box 8).

3.5 EMBED COMMUNITY ENGAGEMENT IN THE ORGANISATION AND THE VALUE CHAIN

Our respondents agreed that in order to be meaningful, public consultation and community engagement processes need to be embedded in the way an organisation operates. While this is quite well understood, it is still not happening in many cases, even in organisations that are known for their good practice. As one industry consultant emphasised in a review of an early draft of this paper: “this can’t be repeated enough times”. Community engagement processes need to be valued and understood by senior management,

BOX 8: COMMUNITY PROTOCOL HELPS COMMUNITY IN GHANA RESPOND TO MINING THREATS

CIKOD started working with the Tanchara community in 2003, helping them to gather information about their local resources and develop a vision of their future development. The approach employed participatory rural appraisal (PRA) tools including interviews, focus group discussions, transect walks and community resource mapping. Key biological, natural, cultural, social and spiritual assets were identified. This also helped to mobilise the community to work towards the vision they identified, and community forums were organised twice a year by the chief to review progress. In 2004, an Australian mining company, Azumah Resources, was granted permission to prospect for gold in the area, which attracted illegal artisanal and small-scale gold prospecting from 2007, threatening the community’s sacred groves and other resources. The Tanchara community formulated a statement protesting about the illegal mining and asking the government to safeguard the sacred groves.

CIKOD also helped the community to draft a biocultural community protocol in 2011, based on previous survey work, including mapping of the sacred groves and other valuable natural and cultural assets. The document articulates the community’s cultural values, their vision for endogenous development, customary rights and responsibilities and institutions and processes for prior, informed consent. The aim was for the community to be able to use this protocol to negotiate with external parties and assert their rights. Documenting the community’s resources also enhances the community’s awareness of these resources, and emphasises their role as stewards of their environment.

As a result of community protest, the mining was halted for three years. With the help of CIKOD, a community forum was set up in 2010 between local authorities and chiefs to discuss how to respond to the prospect of gold mining in the future.

Source: Yangmaadome *et al.*, 2012

THREE SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY CONTINUED

while the business case for ensuring that community engagement is meaningful needs to be clearly articulated to all employees throughout the company (or government department). Community consultation needs to be used to inform decision-making, while risk assessments need to recognise that failure to do adequate community engagement is a major non-technical risk.

An industry respondent pointed out that consultation has time and cost implications for any company: “Meaningful stakeholder consultation is an iterative ongoing process that has time and cost implications for company processes especially if the company ensures consultation with real representatives of the communities it engages with. This is important with regards to project planning and may limit to some extent the number of ‘rounds’ of consultation possible”. Thus it is even more important to make sure that good practice in community engagement and respect for local people are embedded as much as possible in every day understandings and activities as this results in considerable ‘added value’ at no extra cost.

Workshop participants discussed the responsibility of senior managers to make clear that all staff have a responsibility to understand, consider and prioritise social issues in the context of their own work. One industry respondent noted the need to acknowledge that everyone working on a project close to a community – including subcontractor workers – has the potential to affect that community, either positively or negatively. This respondent suggested viewing everyone employed on a project as someone who can have a potentially positive (or negative role): “There are so many people going into the community each day – they give an impression. It is a missed opportunity in not ensuring they

are also ambassadors in the community and not obtaining information from all employees on communities and their satisfaction. It is a matter also of efficiency – being more effective and efficient by engaging in that way”.

Workshop participants discussed at length the role of contractors and how joint venture (JV) arrangements (especially those involving state-owned companies) affect community consultation. Major engineering, procurement and construction (EPC) contractors (or ‘turnkey’ contractors) often have the primary responsibility for implementing social policy throughout the supply chain, ie ensuring that subcontractors follow the policy. Generally it is the workers of contractors and subcontractors who are on the ground engaging on a daily basis with communities, and are often the main implementers of social policy, though they are frequently under-informed and/or poorly experienced in these areas. Workshop participants acknowledged the need to engender a culture of shared responsibility for good environmental and social practice within JVs and along the contracting chain or, as one participant put it: “a shared vision and delineation of accountability”. Key issues include establishing clarity on who is responsible for consultation, and who should take action as a result.

Workshop participants observed that typically JV agreements do not include non-technical elements, but this is an emerging issue. Participants noted that the mining sector has already shifted to more non-technical scrutiny of JV partners before signing agreements. On the other hand, international oil companies are increasingly taking a smaller share in JVs with state-owned companies, which limits their negotiation capacities.

“If you have a handful of people working on social performance, but you have a 1,000 people going into the community undermining it then that’s a waste of resources.”
(Industry respondent)

Workshop participants also discussed challenges relating to EPC contracts which are often unclear about social responsibilities, such as community engagement or ensuring that workers are respectful of local communities. Often policies are attached to an EPC contract without sufficient clarification or training on the detailed requirements. Financial incentives for community engagement often make up a very small part of the contract, compared to incentives to deliver on time and to budget. Participants agreed that if community engagement requirements became a part of the initial EPC contract bidding process or

a JV negotiation, then this can be valued from the beginning through that legal agreement. The chain of responsibility can be more clearly established up front, including enforcement mechanisms. Ongoing communication between contract parties is essential, while adequate training should be provided where necessary. As one respondent noted: “Clients don’t understand the power they have to get this right; if you value the risk at the beginning it will flow to the contractor”. Box 9 outlines some of the ways that Sakhalin Energy oil and gas company in Russia built in social requirements to their construction contracts.

BOX 9: SAKHALIN ENERGY: EMBEDDING SOCIAL ISSUES IN THE CONTRACTING CHAIN

Sakhalin Energy operates an offshore oil and gas project in the Russian Far East. The construction phase involved 10 contractors, over 100 subcontractors, and 25,000 workers at the peak of construction. To manage social issues through the contracting chain, Sakhalin Energy asked tender bidders to include a preliminary Social Performance Management Plan (SPMP) as part of the tender bid and social performance terms and conditions were included in final bid discussions.

During induction, all contractor staff were trained on Sakhalin Energy’s code of conduct. Sakhalin Energy raised community awareness about the code of conduct through meetings, leaflets and posters, which helped to improve contractor compliance. Awareness and compliance, including extending social policies to subcontractors, have been monitored by Sakhalin Energy social experts and CLOs. Sakhalin Energy required construction contractors to have their own CLO or social focal point responsible for engaging with communities and resolving grievances. Sakhalin

Energy’s Production Sharing Agreement commits the company to 70 per cent Russian content (jobs, materials, services). Construction contractors reported regularly on their own levels of Russian content.

Contractors provided accurate information about job opportunities in advance to local communities, maintained employment records identifying the communities that employees came from and have reported on recruitment measures taken in communities. Contractors made monthly reports to Sakhalin Energy using the Social Compliance Monitoring Handbook. The contractors’ CLOs had daily contact with Sakhalin Energy CLOs and monthly debriefing meetings in Sakhalin Energy’s head office. Sakhalin Energy carried out biannual field monitoring of the construction contractors’ performance (by surveying communities and contractor workers, and direct observations). Training and refresher sessions on monitoring and reporting were held regularly for contractors and subcontractors.

Source: Wilson and Kuszewski, 2011, pp. 42–43

3.6 BUILD TRUST IN THE INFORMATION-SHARING PROCESSES

A key challenge identified by our research was how to build trust in information and information-sharing processes. A consultant respondent commented that the issue of working with neutral, scientific evidence is a major challenge and emphasised that a community engagement process needs to be neutral so as to overcome people's scepticism of big projects. A key challenge is where factual evidence is not trusted by communities, for example if it has been commissioned by a company, and is not perceived as being independent. A workshop participant from industry shared an experience where a community did not trust the evidence of impact assessments, which are required by law and paid for by the company or government. The participant observed that a lack of shared understanding of the scientific evidence produced by independent third parties was stifling constructive dialogue. This raised the question of how to judge the authenticity and reliability of evidence that is brought to consultation processes. Who ought to endorse the information if it is to be acceptable to all? How to ensure that consultants who provide services to companies are perceived as objective and trustworthy by the local communities?

A lack of trust in the information-sharing process can also be encountered **within** companies too. For example, a workshop participant from industry noted that company experts may be very reluctant to release information to the public **outside** of an EIA process (which is trusted by company experts). In such cases, technical experts need to be convinced of the importance of transparency to the project or to their role in the project.

The information and evidence themselves need to be accessible to communities: one industry respondent explained how difficult it was to explain complex oil well technology to communities who have never experienced industrialisation. Consultation also needs to be in an appropriate form for local communities (for example, the Turkana people of Northern Kenya are an oral society). Language accessibility is a key concern, not only translating from the dominant industry language into different local or tribal languages, but also use of jargon, which as one Kazakh NGO respondent commented: "is typical for NGOs as much as government and industry".

Another quite simple issue is the length of time communities are given to read, analyse and understand documentation. Sufficient time needs to be allowed for full analysis and comprehension, as well as enough time for questions and answers around the information. In some cases, local NGOs take on the responsibility of reading and analysing information and providing help to communities in understanding complex documentation such as EIAs. But this should complement – and not replace – direct engagement between communities and scientific experts who have prepared the material, to allow for full questioning on its significance and the implications for community lives and livelihoods. Existing guidance on stakeholder engagement covers these aspects, and also requires an adequate balance of gender and age representation. The BIC draft standard on meaningful consultation specifically refers to disability, which has emerged more recently along with sexual orientation as key diversity areas on which to focus.

“Consultation must work with neutral, scientific evidence and people’s perceptions, and all parties need to develop a shared understanding of the independent evidence.”
(Industry respondent)

The Extractive Industries Transparency Initiative (EITI) is one of the major initiatives aimed at increasing accountability in the extractive industries through generating and sharing information. (Companies publish what they pay to governments and governments publish what they receive – the results are compared and audited.) The initiative has at its core a multi-stakeholder group made up of government, industry and civil society that governs the work of EITI in-country. This allows civil society organisations a seat at the table and is an important institution for building trust in the information-sharing process. A key

challenge that remains is how to ensure that local communities most affected by extractive industry development gain access to, and use, the information that is being shared (Wilson and Van Alstine, 2014; Ospanova *et al.*, 2013). These challenges relate partly to trust, partly to entrenched power structures and political will.

Box 10 illustrates some of the challenges of building trust in Nigeria’s EITI process and reflects on the extent to which local civil society has engaged with transparency and accountability initiatives in the country.

BOX 10: EITI IN NIGERIA: PUBLIC TRUST AND ENTRENCHED POWER STRUCTURES

In 2009, a report on EITI in Nigeria published by Chatham House questioned whether or not civil society can become a serious agent of change with respect to transparency, in an economy so dominated by oil (Shaxson, 2009). The report argues that while Nigeria’s EITI initiative, NEITI, had performed well on reporting, it had failed to enable civil society to use the material to hold Nigeria’s government to account – the reasons for this being related more to the structures of power within the country than a need for capacity building among CSOs. The paper concludes that the main audience to benefit from EITI reports has been oil industry consultants, while change had been driven mostly by the elites, and to some extent foreign donors, with little influence from civil society. The lack of engagement points towards the difficulty of influencing entrenched power structures, but also a lack of trust of civil society in the processes. Trust works both ways.

One of Shaxson’s interviewees suggested that for industry and government a key question regarding civil society is who they represent; it is difficult to know if people are trying to take advantage of a process to benefit from donor funds. A localised transparency pilot initiative was set up in Nigeria’s Bayelsa State in the heart of the oil-producing Niger Delta, with the Bayelsa State governor and Revenue Watch Institute. The Bayelsa Income and Expenditure Transparency Initiative (BEITI) focused on expenditures as well as revenue transparency. The governor was driven by a desire to tackle corruption and revenue leakage. A secretariat was set up, and two local NGOs were supported to take part. Yet the initiative ultimately failed to get off the ground. This was blamed on a lack of political will, a lack of coordination among donor agencies, and the reluctance of local officials to open up their books. Civil society activists criticised the governor for wanting the prestige but not the consequences associated with the reforms.

Sources: Shaxson (2009); Weate (2012), Ushie (2013)

THREE SEVEN SUCCESS FACTORS FOR MEANINGFUL COMMUNITY CONTINUED

Respondents noted the challenge of power asymmetries within communities as well as between communities and industry or government. Young people, marginalised groups, and women may not be represented adequately by traditional leaders; women may not want to speak up at meetings, especially in traditional rural settings. Frequently there are gatekeepers in the community. Often the role of gatekeeper is an essential one, since active citizens are needed to drive engagement, read and share information and help to form opinions. There are however some who monopolise information and resources. Sometimes it becomes necessary to have a series of bilateral meetings with representatives of under-represented groups prior to a broader community-wide consultation. But the process also needs to avoid offending or isolating the leaders themselves. Respondents also observed that sometimes communities don't agree among themselves, even in the context of a strong legal framework and where a consultation process has been very good. In some cases opponents refuse to take part in consultation, sometimes as a deliberate way to invalidate the process. This was also highlighted by workshop participants as a challenge for companies, when there is a need to engage the full spectrum of voices in an engagement process.

One workshop participant raised the question of whether local people should be paid to participate in community consultation processes, as an incentive to attend and to cover the costs of their involvement, so as to increase participation. Some communities demand funding on the table before they even start a consultation process. This may be because they need to make sure that companies – or the government – are serious before spending a lot of time on consultation. They also do not want to be out of pocket as a result of taking part in decision-making on their own future

development. However, one workshop participant suggested that, for example in British Columbia, funding for capacity building was becoming perceived as a benefit in its own right.

There may also be issues of trust if some community members are receiving money to participate in a consultation, and others are not involved in the process, or refuse to be involved in the process. The issue of payment and how it is managed is also critical in influencing trust in the outcomes of the consultation, and it is important to ensure that funding flows are transparent and that the process is perceived as neutral and trustworthy. Funding for consultation processes can take the form of a pooled resource with industry and local government contributions, with community organisations contributing in-kind support to the process (organisational capacity or other resources and capabilities). Workshop participants agreed that there is a need for greater understanding of good practice in payment for participation, perhaps starting by ensuring transparency of such financial flows as a basic rule.

3.7 ASSESS THE EFFECTIVENESS OF PROCESSES AND THE VALUE OF OUTCOMES

The question of measuring 'how meaningful' community engagement processes are is particularly difficult, and is something that most respondents were very interested in. It is important to think about the purpose of the measurement, and who the measurement is for, as different audiences require different indicators. Certain criteria or conditions will be important for social impact investors, fiduciary risk assessments, or for the communities themselves. The need for engagement processes to be tailored to local contexts in order to be effective,

makes comparative measurement and the development of universal indicators quite difficult. This is possibly why guidelines and indicators generally tend to focus on measuring process and less on measuring outcomes. Qualitative data may be more appropriate than quantitative data to capture the nuances of meaningful community engagement in very different contexts.

Some questions can be answered fairly directly, particularly in relation to the process. Was the process public? How were the public made aware of the process? Which organisations were involved? Were marginalised groups involved? What was the gender balance? How much information was provided? Was the information produced in appropriate languages? Were agreements negotiated between the parties and what did these contain? How many complaints were recorded about the process and how were they addressed?

It is more difficult to measure how appropriate the information was to the local context, to what extent local stakeholders of different types were able to absorb it, whether trust had in fact been built, whether a lack of conflict is a sign of a good process or not, and whether the quality of consultation was adequate (even if an agreement has been signed). As our respondents noted, agreeing the goals of a consultation process in advance between the company, community and government, is considered to be good practice, and indicators of success at meeting these goals could be mutually agreed at the same time. For instance, the signing of an agreement as the outcome of a consultation process might be one indicator alongside others that might reflect the quality of the negotiation process (based on a stakeholder satisfaction survey, for instance, or pre-agreed aspects of the consultation that ought to be in place). Annex A of the OECD

draft guidance on meaningful stakeholder engagement offers a framework for monitoring and evaluation, suggesting (mainly qualitative) indicators and a method for developing tailored ratings (good, moderate, poor) for aspects such as understanding the local context; providing support to stakeholders to make engagement meaningful; designing robust processes for engagement and following-up on outcomes (OECD, 2015).

A community grievance mechanism is a key tool for monitoring the relationship between a project and a community (Rees, 2011; Wilson and Blackmore, 2013). Several respondents highlighted the importance of maintaining this ongoing feedback loop in a community engagement process. This offers a way to both deepen the engagement, and also resolve conflicts in a timely manner. Community engagement is meaningful when a company picks up on a community concern, that concern is addressed within the company, and the company feeds back the results to the stakeholders concerned. Information generated by the grievance mechanism can systematically be fed into procedures for improving project performance.

Other monitoring techniques employed by proponents of extractive industry projects include: social surveys; community perception surveys (including via SMS/internet); and grievance mechanisms. Total has developed a tool for comparing internal (staff) and external (community) perceptions of an engagement process (see Box 11).

Modern technologies are being used to inform and elicit opinions from citizens by government, industry and civil society alike. Although access to modern technologies is far from universal, many poor and disadvantaged communities that

BOX 11: TOTAL SRM+ MANAGEMENT TOOL

Total's proprietary SRM+ (Stakeholder Relationship Management) tool has been deployed since 2005 to meet the different needs of the company's units in a wide variety of contexts. The company states that it allows them to develop and structure a consistent process for dialogue with Total's stakeholders in more than 130 countries globally. SRM+ is a management tool designed to improve a site or affiliate's corporate social responsibility (CSR) performance. As part of a process of dialogue, they compare the internal vision of Total staff with stakeholder perceptions to develop an action plan appropriate to the operational environment. They ask people living and working near Total facilities, suppliers, government

authorities and other partners about their expectations and perceptions of the company's activities. They also do an internal assessment of the relationship between the affiliate, the production or marketing site or other unit and its environment. Total experts then analyse the differences between the two, to pinpoint areas for improvement and set up an action plan. The purpose is to ensure that the initial internal understanding of the situation considers all viewpoints and issues, before taking action or deciding to continue actions already under way.

Source: www.total.com/en/society-environment/shared-development/our-process/promoting-discussion-and-consensus-building?%FFbw=kludge1%FF#sthash.b4Puaka3.dpuf

are affected by extractive industry operations are increasingly able to access them – particularly mobile phones. Anglo American is using email and internet surveys to elicit monthly opinions on their projects. In South Africa they are planning to do this via SMS. In Nigeria's Niger Delta, the NGO Stakeholder Democracy Network (SDN) has been developing online democracy tools to monitor environmental issues. SDN experts highlight the importance of encouraging, training and helping people to submit reports for local-level accountability to work. "Technology without

the motivated human network is never going to really get off the ground."⁹

Respondents noted that independent monitoring and oversight are critical in helping to ensure consultation processes are fair, robust, legitimate, and are perceived as such by local communities. Third party oversight includes monitoring panels, citizens' oversight bodies, direct NGO monitoring of project activities, and use of social media tools, such as those developed by SDN in Nigeria. One respondent referred to audits that are conducted by NGOs – companies pay only expenses,

9. See <http://dkingdozie.blogspot.co.uk/2014/10/nigerian-oil-spill-monitor.html>

and the research is independent and made publicly available. Respondents in Kazakhstan emphasised the importance of local government support for NGO initiatives that hold industry to account.

Monitoring and oversight can be funded by industry via a separate fund that is administered independently. One example of this emerged in the wake of the 1989 Exxon Valdez oil spill in Prince William Sound, Alaska (see Box 12).

However measurement and monitoring are done, a key question is how the results are used by the company (or government department), both internally to improve policies and processes, and externally to inform local communities about project implementation, risks and local concerns. Participants at the workshop emphasised the need to place the same amount of importance on the measurement of non-technical as technical and commercial risks, to be considered at the highest level of management responsibility.

BOX 12: PRINCE WILLIAM SOUND REGIONAL CITIZENS' ADVISORY COUNCIL, ALASKA

The Prince William Sound Regional Citizens' Advisory Council was mandated by the US Oil Pollution Act of 1990 following the Exxon Valdez oil spill. The Council is a permanent, industry-funded, independent non-profit corporation whose members include communities, commercial fishing organisations, environmental and tourism organisations, and Alaska Native groups. The Council reviews oil spill response plans, environmental protection capabilities and potential environmental impacts. It works to raise public awareness as well as holding the industry to account.

Before the 1989 Exxon Valdez oil spill, there were occasional formal public hearings by regulatory agencies, but no other ways for citizens to speak directly about the operations that affected their communities and livelihoods. Prior to the spill, some Prince William Sound

residents had proposed the idea of citizen oversight of the oil industry, but these suggestions were generally met with negative responses. The Council was set up by affected residents following the spill, which they believe could have been averted with better government oversight, while better response planning could have lessened the impacts.

In 1990, the Council signed a contract with the Alyeska Pipeline Service Company, guaranteeing access to its facilities for monitoring purposes, and annual funding (around US\$2.8 million/year, a figure reviewed every three years), for as long as oil is flowing through the pipeline. The contract also guarantees the council's independence from the industry.

Source: www.pwsrca.org/about/history/

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CONCLUSIONS AND RECOMMENDATIONS

Despite improvements in guidelines and advances in debate and practice, our respondents acknowledged that community consultation and engagement processes still frequently go wrong or are not perceived to be meaningful. Different stakeholder groups agree on the need to address this matter, but there is less agreement on how to do this. In the course of our research, we encountered a wide range of perspectives on what makes community engagement meaningful. It is positive that the emerging definitions of 'meaningful consultation' and 'meaningful stakeholder engagement' in international standards and guidelines appear to enjoy broad support and are being used as a baseline. However some stakeholders are looking to go further. Our respondents discussed going beyond consideration of risks, impacts and due diligence, and to extend the notion of meaningful consultation to embrace company–government–community partnerships, community-led development plans and negotiation of benefits.

With regard to measuring and assessing what makes consultation meaningful, existing guidance and the standards and indicators that have been developed to date typically focus on **process**. However, our respondents argued for more consideration of what **outcomes** make a consultation meaningful, and the development of indicators to evaluate these outcomes. Our study identified a range of viewpoints on the desired outcomes across NGOs, companies and government – from eliciting community consent to a project going ahead, to ensuring a company's social licence to operate, to enabling a government to incorporate competing rights and

interests into development planning. This merits further exploration. For example, how are different views on desired outcomes understood and catered for in current practices on the ground? How can outcomes be measured to demonstrate that a consultation process has been meaningful?

Our respondents emphasised the need for senior level leadership and integration of meaningful community engagement principles and practices through company and value chain operations, and the importance of building capacities of people in government, companies and CSOs or community organisations to participate or run engagement processes effectively. While these are not new findings, they are worth repeating to underline the ongoing gap between well-understood good practice guidelines and their implementation on the ground. Our interviews and discussions also raised some further points of interest that are possibly less well understood, such as the role of emotion in stakeholder engagement; issues related to paying community members for participation in consultation processes; and the ways that local politics can affect community engagement. Our respondents also indicated the need for more evidence, including case studies of practical experience in particular contexts, to help justify additional investment in making community engagement meaningful.

Our recommendations below include possible actions as well as research priorities identified in the course of this project. Workshop participants also suggested that a larger survey might be welcome, to expand on the preliminary findings of this study.

1. CLARIFY AND ALIGN GOVERNMENT AND INDUSTRY ROLES

The predominant focus on companies in good practice guidance may lead people to overlook the importance of government roles (from regulators to the judiciary) in implementing, regulating and incentivising meaningful community engagement, often in the earliest stages of industrial planning. While public consultation is generally a mandatory part of environmental impact assessments that are required by law, there is often a lack of

clearly defined government regulations on how to carry out consultation processes. Where countries have ratified relevant international conventions, frequently the national legislation does not adequately incorporate the requirements of these conventions. Companies face risks if they do not fully understand government roles and responsibilities, if governments have not met their own obligations under international conventions, or if the company's community engagement efforts are not aligned with those of government agencies.

Suggested actions:

- Integrate the principles and practices of meaningful community engagement (from conventions and good practice standards) into legislation and government institutions, including clear definition of requirements for public consultation.
- Analyse government roles and responsibilities relating to community engagement as part of companies' due diligence efforts.
- Coordinate government and company actions effectively throughout the project life-cycle.
- Consider the company–government relationship in due diligence monitoring by international financial institutions and other investors.

Research priorities:

- Explore and clarify the roles and responsibilities of different levels of government and how they can and do coordinate and collaborate with industry.
- Identify and address the challenges of government–industry collaboration in weak states, conflict regions and other difficult contexts.

2. UNDERSTAND THE LOCAL CONTEXT

Understanding the local context is a prerequisite of meaningful community engagement, as recognised by existing guidance. Project documents and decisions need to be tailored to the local context and should adequately reflect local realities and concerns. Yet this goal is often hampered by limited budgets, limited time and lack of skills and capacities among company and government personnel. Key decision makers in

government departments and in companies often do not understand communities well enough before making decisions that need to be sensitive to local community needs, expectations and vulnerabilities. Measures to build understanding of the local context often do not happen early enough in the decision-making cycles. Conflict and post-conflict situations and other contexts, such as closed or oppressive regimes, require even more care and provide even greater challenges to understanding local specifics.

Suggested actions:

- Hire local staff and staff with skills and experience in, for example, anthropological research (within the local community), where appropriate, so as to build and embed understanding of the local context within the company or government department.
- Make sure that company and government personnel, including senior managers, have experience of engaging with local people in field situations to ensure that decision-making is sensitive to local realities.
- Ensure that consultants preparing impact assessments and other documents spend time engaging with local communities and tailor their conclusions and recommendations to local contexts, rather than basing them on standard conclusions used elsewhere.
- Consider the field experience, skills and capacities, as well as time spent with communities by managers and operational staff, as part of investors' due diligence.

Research priorities:

- Carry out in-depth case study research exploring the local socio-cultural and political contexts of diverse extractive industry projects, especially in difficult contexts such as post-conflict situations and oppressive regimes.
- Conduct broader anthropological field research in regions where extractive industries are operating, in order to understand the wider context and how the industries fit within that context.
- Develop targeted guidance on how to understand the local context and how to apply that understanding in a project situation, drawing on learning from in-depth case studies.

3. START EARLY WITH A LONG-TERM PERSPECTIVE

Existing guidance recognises that community engagement needs to start early, including during exploration, so as to develop understanding of the context and to build trust with communities. It is often the responsibility of governments to prepare the ground before companies are brought in, and governments also have the longer-term development perspective. At this stage it is important to consider the cumulative impacts of all developments taking place in one region, something that is often overlooked. Junior companies are frequently involved at the earliest

stages of exploration activities, yet often lack the resources and skills for complex stakeholder engagement activities, and may not have external drivers such as civil society campaigns. The risk of an exploration coming to nothing requires companies to prepare their exit strategy as carefully as their entry, and underscores the need for governments to prepare well for 'boom and bust' cycles. When projects do start up, companies are often involved in a region for many years and so relationship building with the community is a long-term investment. Signing benefit-sharing agreements with communities is becoming increasingly common practice.

Actions:

- Conduct government-led in-depth community engagement prior to major industrial development in order to discuss future options, elicit desirability of plans and assess cumulative impacts, in alignment with a strategic environmental assessment (SEA).
- Target company, government and investor due diligence efforts at a longer time horizon (eg 40 years), addressing cumulative effects and long-term development opportunities.
- Develop and share good practice in the negotiation, implementation and evaluation of benefit-sharing agreements.
- Invest in community engagement activities and the required staff capacities by junior companies and others engaged in exploration and other early project activities.

Research priorities:

- Explore the concept of 'partnership' between government, industry and communities.
- Conduct research into the way that benefit-sharing agreements are negotiated and implemented, and how effective they are at improving well being and livelihoods.
- Study the community engagement responsibilities of junior, as well as major companies and governments, including exit strategies, transferring responsibilities in a buy-out situation, and mitigating the effects of 'boom and bust'.

4. BUILD CAPACITIES AND PREPARE WELL

Capacities for ensuring meaningful community engagement may be lacking in government, companies, civil society and communities. Governments in new resource economies are often poorly prepared for major developments, from preparing and enforcing legislation to negotiating contracts with companies. Even in more developed resource economies, governments may have a poor understanding

of local community needs. Companies need to build social skills and sensitivity among all their staff, and hire appropriately qualified staff for community engagement roles. Communities may also lack the knowledge and experience to engage on complex extractive industry topics and to understand their rights in the face of such developments. Donor assistance for capacity building can also be fragmented, especially in new resource economies that have attracted donor attention.

Actions:

- Build local social and cultural knowledge and 'emotional intelligence' among company and government personnel and learn from experiences of conflict and failure in community engagement.
- Build the skills within companies and government agencies to discuss future scenarios and complexity with local communities.
- Build community capacities to engage and build realistic expectations of a potential project.
- Organise pre-consultation processes to build understanding and awareness among local stakeholders prior to important consultation events, such as official public hearings, as part of environmental impact assessments.
- Ensure effective collaboration among donors and others supporting capacity building, as well as among departments within companies and government agencies.

Research priorities:

- Build understanding of skills gaps in government agencies and companies in particular socio-cultural and political contexts.
- Analyse the effectiveness of community protocols and other capacity building approaches in preparing communities to engage meaningfully and negotiate agreements in extractive industry project contexts.
- Study effective mechanisms for funding civil society and community capacity building, including by companies, as well as good practice and ethics in relation to payment for participation.

5. EMBED COMMUNITY ENGAGEMENT IN THE ORGANISATION AND THE VALUE CHAIN

It is well-understood that community engagement processes are more meaningful when they are embedded in the way an organisation operates, and throughout the value chain. Community engagement commitments can be formalised through contracting and tendering processes. Yet problems still exist around poor communication, lack of joined-up thinking and confused lines of accountability. There might be particular

challenges, for example, in complex supply chain arrangements, or in joint ventures where a major is a minority partner in a JV with a state-owned enterprise. Workers who are based close to communities and fail to follow good practice in community engagement will undermine any good work carried out by a company's social performance unit, which will be a waste of resources. Community engagement has time and cost implications for a project, and finding ways to embed good practice into everyday understandings and activities can be a significant cost saving.

Actions:

- Include community engagement, and the need to get it right, as a key non-technical risk in standard risk assessments.
- Provide clear statements by senior managers that all project personnel have a social responsibility, including subcontracted workers, backed up with mechanisms to ensure internal compliance and shared liability throughout the company and contracting chain.
- Include requirements for meaningful community engagement in major contracts, subcontracts and joint venture negotiations.

Research priorities:

- Study the experiences, challenges and opportunities of community engagement by contractors and subcontractors.
- Explore the realities faced by multinational companies in negotiating and operating as a JV partner, especially in cases where they are minority shareholders in state-owned companies, and in challenging socio-political contexts.

6. BUILD TRUST IN THE INFORMATION-SHARING PROCESSES

Working with neutral, scientific evidence is necessary, but the material produced in the context of an extractive project, such as an environmental impact assessment, may not be understood or trusted by communities. This may be the case especially if the material fails to include local voices or address local concerns and has been commissioned by a company or government department with an interest in ensuring that the project goes ahead, and written by a consultancy that is perceived as depending

on such commissions. Trust works both ways, and company experts themselves often need to be convinced of the importance of transparency as a way to build greater understanding. Information for communities needs to be accessible and should have relevance for their lives. A process of information-sharing can be undermined by power asymmetries and entrenched power structures at the national or local government level, and within communities themselves. Payment for participation in a consultation process is an issue that needs to be better understood and managed, with transparency and accountability again required at the heart of this practice.

Actions:

- Develop and promote measures to increase public trust in impact assessment and other information-sharing processes, for example relating to selection of consultants and inclusion of local voices and concerns in final documentation.
- Make transparency a key principle in community engagement processes and ensure that wider (top-down) transparency and accountability initiatives reach out to the local communities most affected by extractive industry operations.
- Provide resources to civil society organisations for them to read and analyse complex materials and help communities understand those materials.
- Seek endorsement of factual material by mutually agreed and trusted persons or institutions.

Research priorities:

- Study positive experience and promising ways to build trust around information, the most accessible and trusted formats for information, and the processes of sharing that information.
- Produce targeted case studies on community engagement processes in situations where trust may be very low, such as conflict and post-conflict situations.

7. ASSESS THE EFFECTIVENESS OF PROCESSES AND THE VALUE OF OUTCOMES

Measuring how meaningful consultation has been, and how tangible the outcomes, is very difficult, but increasingly seen as a major challenge to address. The context-specific nature of meaningful consultation means comparative measurement and universal indicators are quite hard to establish and use, or will be lacking in accuracy or rigour. Various techniques are being used for monitoring and evaluating community engagement processes and community perceptions of a project. It is

increasingly well understood that involving communities themselves in designing indicators and carrying out monitoring activities is valuable. Modern communication technologies are starting to be used more widely, including the internet and mobile phones. For these to work, people need to be supported and motivated to use them. Third-party monitoring and oversight are important, although there are challenges around how industry can pay for this kind of oversight in a neutral way. Key questions are to what extent this kind of monitoring is prioritised by senior management, and how the information is used to improve project performance and inform local communities about the project.

Actions:

- Involve communities in the co-design of engagement processes, including the definition of meaningful engagement and therefore what to measure and how to monitor the effectiveness of the process and the value of the outcome.
- Combine systems thinking with context thinking, by developing broad comparable systems indicators as well as site-specific indicators of success for community engagement processes, in collaboration with local stakeholders.
- Support independent monitoring and oversight as a way to ensure processes are fair, robust and legitimate, and are perceived as such by local communities.

Research priorities:

- Develop and test criteria for measuring both processes and outcomes of community engagement effectively.
- Conduct anthropological field research to address such questions as “how was trust built in this situation?” and “how satisfied were different parts of the local population with that consultation process?”
- Study the growth in usage of social media and how effective it has been in enabling communities to understand, monitor and engage with projects.
- Explore creative options for financing third-party oversight.

Our respondents emphasised the benefits of meeting to share experience, and suggested that the creation of similar multi-stakeholder spaces would be a useful activity in future to explore some of the identified challenges. Increased openness and willingness to learn from success

and failure can help to enhance understanding and capacities for problem solving. As such, we are willing to engage further in discussion and debate on this topic, which will only increase in importance over time.

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MEANINGFUL COMMUNITY ENGAGEMENT IN THE EXTRACTIVE INDUSTRIES

STAKEHOLDER PERSPECTIVES AND RESEARCH PRIORITIES

The term 'meaningful' has started to appear in international standards and guidance for stakeholder consultation and engagement that are applied to the extractive industries, including the UN Guiding Principles on Business and Human Rights (2011) and the OECD Guidelines on Multinational Enterprises (2011). This paper explores whether there is a shared understanding of what 'meaningful community engagement' means in the context of extractive industry development. It discusses the challenges faced by companies, governments and civil society organisations in ensuring that community engagement processes are meaningful in practice; some of the good practices that are now emerging; and what is required to ensure that 'meaningful community engagement' leads to better sustainable development outcomes.



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