COMMUNITY PROTOCOLS TOOLBOX

INTRODUCTION

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

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

TOOLBOX DESIGN

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

Contents

BACKGROUND ON THE TOOLBOX

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

BACKGROUND ON COMMUNITY PROTOCOLS

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

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

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

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

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

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

BACKGROUND ON THE PROJECT

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

The aim of the project is to identify good practices for utilizing community protocols as an instrument that supports communities in mobilising and engaging with external actors in extractive industries, to safeguard their rights, and to uphold external actors' responsibilities. Through analysis of the development of community protocols in four different communities, the project set out to answer the following six action research questions:

1. How can community protocol processes support communities in directly engaging and negotiating with companies and/or investors on the basis of free, prior and informed consent, community development agreements and other similar arrangements?

2. How can community protocol processes support communities in engaging with governments to clarify, secure and enforce the protection of their territories, resources and ways of life, including all related rights, affected by extractive industries?

3. At what stage of project development (i.e. exploration, feasibility and planning, construction, operation and closure and reclamation) can a community protocol have the greatest effect with respect to the engagements set out in questions 1 and 2? At what stage(s) is it least effective?

4. How can community protocol processes support communities in using redress mechanisms (for instance, through documentation and legal empowerment)?

5. How can community protocol processes support communities in addressing internal conflicts that arise in connection with extractive industries and large-scale investment projects (such as exclusion or resource control disputes)? What elements are/were essential to address the issue in an endogenous manner?

6. What are general good practices and methodologies of community protocol processes that apply in this context, irrespective of the status of a project, the actors involved and the nature of the communities' aspirations and expectations vis-à-vis the investment project?

The Protocol Processes

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

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

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

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

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

NATURAL JUSTICE

IDEA IN
A FOREST
DESIGN

HEINRICH BÖLL STIFTUNG

1

CONSIDERATIONS FOR FACILITATORS

Community
Protocols
Toolbox

Booklet 1

CONSIDERATIONS FOR FACILITATORS

In general, the process of developing and using a community protocol[1] involves collective reflection and deliberation, good communication, working together to document information, legal empowerment, and social mobilization. In deciding whether and how to develop a community protocol, facilitators should keep several **elements** in mind that are relevant to these principles. These include the: **facilitator's perspective**; **community background**; **process**; **outcome**; and **legal landscape**.

These elements are not listed in order of importance and there may be others to consider as well. The context of your situation will determine the relevance of each element and its related questions. Also, *some elements may overlap*. Where possible, this has been *highlighted*.

TOOLBOX USAGE TIP
This Booklet is organized according to the elements listed above. Similarly, *Booklet 2* on Participatory Methodologies and Tools follows the same organizational structure. For every element listed here there is a corresponding tool in *Booklet 2*.

In the next section, each element or sub-element is addressed through two categories: **context** and **questions**.

● **Context**
This category provides background and context for the questions, explaining why they are important and relevant.

● **Questions**
This category provides some open-ended questions relevant to the particular element that facilitators should consider before they embark on the process of assisting a community to develop a community protocol. The questions are designed to help the facilitator conduct due diligence to understand the context they will be working in as well as the challenges and opportunities that exist.

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1 *For more information on community protocols, see discussion on* Toolbox *cover.*

It is beyond the scope of this Toolbox to provide "if-then" scenarios for each question. However, if the answers to these questions identify fundamental issues regarding the process, the facilitator may wish to address such issues before moving forward.

When other Booklets contain relevant information this will be indicated in a **Relevant Booklet** section.

Elements

1. FACILITATOR'S PERSPECTIVE

Because community protocols are by definition a community-led process, the perspective of the facilitator is a key aspect of the protocol process.

Context
The identity and perspective of the facilitator are critical to community protocol development and facilitators need to clearly understand their role in the process. In general, if the facilitator is from outside the community, it is important to identify community catalysts from within the community to drive the development of the protocol. Additionally, community contacts who have the authority to invite others (such as an external facilitator, lawyers, or other experts) to work with the community will be necessary. The facilitator needs to have a full understanding of the pace at which the community engages in decision-making, how the facilitator should interact with community members, community dynamics and other similar information.

Facilitators should have an awareness of how their own worldviews and mindsets can affect the process, and they should approach the process from the position that communities understand their own needs and priorities. The process of protocol development can often take a long period of time (i.e. several years) and involve extensive work, and facilitators need to be aware of this as they enter into the process.

Questions
- Is the facilitator from inside or outside the community?
- Does the facilitator have community contacts that will be involved in the protocol process?
- Is the facilitator prepared to gather information and ensure that it is shared with the community in a timely and organized manner?
- Is the facilitator prepared to work with the community on a long term basis in a spirit of mutual respect and understanding?

Relevant Booklet:
Booklet 2, Section 1:   Tools 1 to 3
Booklet 3, Section 2:   Common Elements in Community Protocols
Booklet 3, Section 3:   Guiding Principles for Facilitators
Booklet 3, Section 4:   How are Community Protocols Developed

2. COMMUNITY BACKGROUND

*This category involves understanding several community-focused elements in the development of the protocol. This includes internal community dynamics such as political and religious dynamics. The Community Background element includes the following sub-elements: a) **identity of the community**, b) **community governance structure**, c) **purpose of the protocol**, and d) **other stakeholders**.*

a. Identity of the Community

Context
The better the community can be identified, the more clarity there will be on the scope of the protocol. The identification of the 'community' for purposes of the protocol should be undertaken by members of the community. Facilitators, especially external ones, must approach the overall element of the community's identity with sensitivity, since rigid definitions could exacerbate existing conflicts. For example, individuals within a certain geographic community may feel differently about mining activities – some might support a mine, while others might oppose it, even though they live in close proximity to one another.

Questions

- How does the community identify itself? Is it geographical, by customs, by livelihood, a shared history, or other factors?
- Who from the community will participate in this identification, and how will the facilitator ensure that the process is as inclusive as possible?
- Are there actual or potential divisions within the community that may affect the development of the protocol?

Relevant Booklet

Booklet 2, Section 2: Tools 4-7
Booklet 3, Section 5: Using a Community Protocol
Booklet 4, Section 1: Conceptualising the Community

b. Community Governance Structure

Context

This element involves not only understanding the community's formal governance structure at a general level, but also the overall power dynamics in the community. Formal governance structures that are established along gender lines, for example, may not accurately reflect the full picture of how decisions are made, knowledge is shared, or of other influences in community decision-making. It is important for the facilitator to be able to work with the community to holistically map its governance structure in a way that accurately captures the various nuances of leadership. That process (and the process overall) should involve meaningful participation from all members of the community, including women, youth, elders and other potentially marginalized groups. (See also Section 3: Participants).

Questions

- Who are the formal community leaders and what are their views (i.e. supportive, opposed) on the development of a protocol?
- Is the community leadership structured in a way that will involve community members to participate in a way that fulfills the spirit of a community protocol?
- Are there forms of hidden power within the community? How might such power affect the community protocol process?

Relevant Booklet

Booklet 2, Section 2: Tools 8 and 9

c. Purpose of the Protocol

Context

The purpose of the community protocol—which can evolve as the process progresses— will influence the protocol's scope as well as the way it is developed. It is important to keep in mind that protocols are living documents, and their purpose can shift in focus and/or be broadened. One common use of protocols is for defensive purposes, that is to call on external actors to cease harmful activities that are already occurring or that have the potential to occur if plans progress unchecked. Alternatively, protocols can serve more proactive or aspirational purposes, which may involve seeking recognition of communities' ways of life and relationships with their territories and areas, or working collaboratively toward a tangible outcome such as a benefit-sharing agreement. Additionally, it is important to understand who within or outside of the community is suggesting the development of a community protocol and why. While external parties can provide support, the goals of a protocol process should be driven internally, within the community. (See also Section 4: Uses of the Protocol).

Questions

- What does the community hope to achieve by developing a community protocol?
- What are the desired internal community development outcomes?
- Is the protocol directed toward any particular entity?
- Are there any external parties such as government agencies or organizations pushing for development of the protocol?

Relevant Booklet

Booklet 2, Section 2: Tools 10 and 11
Booklet 3, Section 1: Why Are Community Protocols Being Developed
Booklet 3, Section 2: Common Elements in Community Protocols

d. Other Stakeholders

Context

If the protocol is in response to a particular project, the parties supporting that project (both inside and outside the community) may take issue with the development of the protocol. That dynamic will need to be taken into account in the process. (See also Section 3 Participants; Section 4 Potential Consequences). It is also important to consider the

impact on the community if other stakeholders are included in the protocol process, especially if they are in positions of power vis-à-vis the community, or if their interests are different from the community.

Also, in relation to neighbouring communities, there may be different positions regarding an external development, such as a new road being built. A community protocol that may highlight the rights and view points of one community may inadvertently undermine the voices of neighbouring communities being heard and lead to conflict. These are potential dynamics that the facilitator should be aware of.

Questions
- Who outside of the community will be potentially impacted by or impact the development of the protocol?
- Might neighbouring communities be affected by the protocol, and might that affect inter-community relations?
- Should other stakeholders be included in the process?

Relevant Booklet
Booklet 2, Section 2:   Tool 12
Booklet 4, Section 3:   Identifying and Addressing the Stakeholder

3. PROCESS

This element explores the major issues to consider before engaging in the process of developing the community protocol. (For an in-depth discussion see *Booklet 3, Section 4.: How are Community Protocols Developed?*) A process that has integrity is critical to developing a protocol that is representative of the community's views. The Process element includes the following sub-elements: a) **participants**, b) **meetings and documentation**, c) **timing**, d) **resources**.

a. Participants

Context
The participants are key to the integrity of the protocol process. The community's governance structure will often be very relevant to who within the community participates. The facilitator should strive to promote the fullest participation possible, including of women, youth, the elderly, and other often underrepresented groups. If differences in literacy and

language between the community and the facilitator are barriers, translation services may be required. Other methodologies, such as non-verbal techniques may need to be employed to ensure that everyone's voice is heard. (Non-verbal methodologies can be useful even if there are few literacy and/or language barriers. Often artistic methodologies can create safer platforms for people to express their real views than conventional verbal methodologies.) If external parties are going to participate in some aspect of the process, that form of participation will need to be taken into account (See also Section 2 **Community Governance Structure**; *Other Stakeholders*).

Questions
- Who will participate in the process?
- Are there marginalized or vulnerable groups in the community, and how can their engagement with the protocol process be ensured?
- Are there any literacy barriers? Are there language barriers?
- Will external parties be included at any stage of the development of the protocol?

Relevant Booklet
Booklet 2, Section 3:   Tool 13
Booklet 3, Section 4:   How Are Community Protocols Developed
Booklet 4, Section 1:   Conceptualising the Community.

b. Meetings and Documentation

Context
It is important that as much as possible, members from within the community are responsible for documentation, consolidation and actual development of the protocol. The facilitator should take into account the logistics involved in capturing information that is brought forth in the protocol process. The facilitator should also determine how the community as a whole will stay engaged in the process given that in many cases there will be varying degrees of participation by community members in the process.

Questions
- Are there "community catalysts" who can drive the process within the community, including ensuring that inclusive meetings take place?

- How will you decide which issues to discuss, and in what order?
- How will discussions be facilitated in a culturally appropriate manner?
- How will the discussion and other information be documented?
- Who will consolidate the documentation and actually develop the protocol in a way that ensures community ownership of the material?
- How will the community approve the content of the community protocol?

Relevant Booklet
Booklet 2, Section 3:   Tools 14 to 16
Booklet 3, Section 4:   How are Community Protocols Developed

c. Timing

Context
The timeframe of the protocol is heavily dependent on other elements of the process (See Section 2: Community Governance Structure; Purpose of the Protocol). One particularly relevant element is the purpose of the protocol. For example, if the purpose is to respond to a specific development project that is planned to break ground on a specific date, the timeframe might be influenced by the schedule of that project. The community's governance structure is also an important factor. A community with a stronger and generally representative governance structure would likely find it easier and faster to develop its protocol than one without, for example. However, regardless of how well the community is organized, protocol processes generally take a significant amount of time. Thus, the facilitator should help the community strike a balance between a process that is as inclusive and holistic as possible but also fulfills the purpose of the protocol within a timeframe that is relevant to the goals the community is trying to achieve.

Questions
- What is the timeframe for developing the protocol?
- Is the community comfortable with the proposed timeframe?
- Are there any external factors impacting on the timeframe for development of the protocol? Is this likely to impact on the integrity of the protocol?

Process and outcome are closely related concepts in the development of community protocols.

Relevant Booklet
Booklet 2, Section 3: Tool 17
Booklet 4, Section 2: Managing Timeframes

d. Resources

Context
Resources are essential to develop a community protocol. These include places where community members can meet, transport to get there, meals during meetings, tools to capture ideas, and time spent putting those ideas into a form that can be revised and eventually turned into an output. Resources will affect how many people can actually participate in the process and how long the process can continue. Resources are also necessary to using the protocol once it is developed, such as to hold events to draw attention to the protocol.

Questions
- What internal and external resources are required to develop a protocol?
- What resources are available to use the protocol once it is developed?
- Are there any organizations supporting the process? If so, for how long will they do so? How might their funding timeframes impact the development of the protocol?
- Are resources available for related activities, such as participatory mapping?

Relevant Booklet
Booklet 4, Section 2: Managing Timeframes

4. OUTCOME

The outcome of the process includes more than just the protocol itself. Facilitators should also consider the results of engaging in the process, as well as how to ensure that there is follow up. The Outcome element includes the following sub-elements: a) **form of protocol**, b) **uses of the protocol**; c) **potential consequences**, d) **monitoring**.

a. Form of the Protocol

Context
Process and outcome are closely related concepts in the development of community protocols. It is entirely possible to begin the process of developing a protocol without knowing what physical form it will take. At a certain point, once the form of the protocol is agreed, part of the process will need to be geared toward obtaining that form. For example, if the form of the protocol is a document, there could be a drafting committee, and people responsible for ensuring the drafting takes place. If it is to be a video, there will be other considerations to take into account, including resources needed. Additionally, the protocol's form will be dependent on many factors, including what is culturally appropriate as well as whether it is geared toward specific stakeholders.

Questions
- What will the physical form of the protocol be: e.g. a document, video, a different medium?
- Is the form culturally appropriate?
- Can the community easily understand and use the protocol for its intended purposes?

Relevant Booklet
Booklet 2, Section 4: Tool 18
Booklet 3, Section 5: Using a Community Protocol
Booklet 3, Section 6: Community Protocols in Practice

b. Uses of the Protocol

Context
The planned specific uses of the protocol can have an effect on the form that it ultimately takes. If the protocol will be used externally, it will need to take a form that external parties can understand. It may be useful to develop a separate form of the protocol if there is extensive documentation developed during the process and/or information that the community prefers not to share.

(It is important to note that while "uses" is shown here as a sub-element of Outcomes, processes that are part of the development of the protocol are often also useful and/or utilised to advocate or engage with external actors. This is also considered "using" the community protocol.)

- How will the community protocol be used?
- Will it be shown to external parties or kept as an internal resource?
- Are there parts of the protocol, such as maps of sacred sites or other information, that the community wants to keep confidential?
- Will it be used in litigation?

Relevant Booklet
Booklet 2, Section 4:   Tool 19
Booklet 3, Section 5:   Using a Community Protocol
Booklet 3, Section 6:   Community Protocols in Practice

c. Potential Consequences

Context
Developing a community protocol can raise issues of rights that could cause conflicts with the government, multinational corporations, or other parties involved in activities that are causing impacts to communities. It is important to understand and anticipate possible consequences and take them into account. It is possible that including external stakeholders in some elements of the process could reduce conflict, but that will depend on each specific situation (see also Section 2, Other Stakeholders).

Questions
- What impacts will developing the community protocol have?
- Is the development of and/or use of the protocol safe in light of the existing political climate?

Relevant Booklet
Booklet 2, Section 4:   Tool 20
Booklet 3, Section 5:   Using a Community Protocol
Booklet 3, Section 6:   Community Protocols in Practice

d. Monitoring

Context
The community protocol process is about more than just producing a physical output, such as a document or video (although that output is an important element). In general, communities will want to use the process and form of a protocol for a purpose, such as ensuring that

extractive activities are conducted in a manner that respects their rights, or to articulate appropriate processes of obtaining free, prior and informed consent. There should be a process in place to ensure that the results of the community protocol process are monitored, and the form of the protocol is regularly revised and updated to reflect the changing needs, priorities and interests of the community.

Questions
- Will there be processes in place to monitor and evaluate the results of developing the protocol?
- How will the community ensure that the protocol continues to maintain its relevance in the future?

Relevant Booklet
Booklet 2, Section 4:   Tool 21

5. LEGAL LANDSCAPE

This element encompasses the customary laws that govern the community, as well as the concept of legal empowerment. Legal empowerment embodies the principles that law should not remain a monopoly of trained professionals and that alternative forms of advocacy or dispute resolution (such as dialogues) are often more attuned to local realities than formal legal processes. The Legal Landscape element includes the following sub-elements: a) **customary law**, *and* b) **other legal frameworks**.

a. Customary Law

Context
Apart from communicating customary laws to outside parties through the protocol, customary law will also be an important aspect of who in the community participates in the development of the protocol, how meetings are run, and how the protocol is eventually used. It will be important to understand the community's customs to ensure that the protocol process is designed in a way that respects and incorporates them. It is also important to know whether those customs will allow for an inclusive and representative community protocol (see also Section 2: Community Governance Structure; Section 3: Participants).

Questions

- What are the relevant customary laws that will govern the development of the community protocol?
- What are the relevant customary laws that will feature in the community protocol, such as how best to engage with external parties, or decision-making procedures within the community?

Relevant Booklet

Booklet 2 , Section 5:   Tool 22
Booklet 5, Sections 1-3:   Legal Elements of the Community Protocol

b. Other Legal Frameworks

Context

There are many ways that communities can learn about and use the law through the protocol process. In developing the protocol, facilitators should encourage understanding and discussion of: sub-national, national, regional and international laws and policies and how they relate to the community's territories; the community's rights and responsibilities, as well as those of relevant external actors; ways to engage and influence these external actors in accordance with the community's customary laws; and access to grievance mechanisms, including formal legal support and alternative dispute resolution in cases of conflict or rights violations.

Questions

- What are the relevant national, regional and international laws, as well as policies (such as the UN Guiding Principles on Business and Human Rights, OECD Guidelines, Sustainable Development Goals, National Biodiversity Strategies and Action Plans, and other policy options)?
- Are there judicial and non-judicial grievance mechanisms available to communities?
- Who will build community capacity on local, regional and international laws and strategies?
- How will the community communicate their knowledge of the law in the protocol?

Relevant Booklet

Booklet 2, Section 5:   Tool 23
Booklet 3, Section 5:   Using a Community Protocol
Booklet 5, Sections 1-3: Legal Elements of the Community Protocol

LYNNE STUART

2

PARTICIPATORY METHODOLOGIES AND TOOLS

Community
Protocols
Toolbox

PARTICIPATORY METHODOLOGIES AND TOOLS

Engaging with communities in an appropriate manner when developing community protocols requires active enquiry and a commitment to an inclusive and culturally responsive group process. This Booklet aims to support such processes by setting forth textual, visual, verbal and dramatic "tools" that enable dialogue and documentation of community realities, complexities and aspirations.

HOW TO USE THIS BOOKLET

Although every community will need to decide for itself how to undertake its protocol process, there are five major **elements** that will be common to most processes. These elements are discussed in detail in *Booklet 1* and are listed as follows: 1) Facilitator's Perspective; 2) Community Background; 3) Process; 4) Outcome; and 5) Legal Landscape.

This Booklet *(Booklet 2)* follows the same order of *Booklet 1* to provide participatory methods and tools for each of the five elements listed above. Despite being organized in this manner, the tools are potentially relevant to all of the elements, and it is up to the facilitator and community to use them as they see fit. As a practical matter, information relevant to multiple elements is often elicited in a single group exercise or meeting.

Categories of Tools

Textual, visual, verbal and dramatic tools are included in this Booklet. The selection of tools should be based on relevant considerations such as convenience, appropriateness to the context, and also on the comfort levels of the community. Additional information is provided below on each of the different categories.

TEXTUAL: *As their name implies, textual tools generally use written text. However, they are often structured and organized visually (graphs, tables, arrows etc.) to enable quick and easy comprehension. For external facilitators who may be used to text-based education, these tools may be the easiest*

to employ. Textual tools also have the added advantage of being easily documented, as the process itself serves as documentation. However, if the facilitators are working with a community that is not comfortable with text, these tools may become exclusionary.

VISUAL: *Visual tools can be used as stand-alone tools, or to compliment other tools in this Booklet. Visual tools have the advantage of breaking the barrier of written text, thus making the process more inclusive. However, when using these tools, it is important to ensure that the visual language used (referring to drawing styles, materials used, medium of drawing etc.) is in line with the community's own way of visual expression. For example, in India, a community developing a protocol was unable to relate to or identify with a visual tool that involved a digitally animated camel because the community was unused to animation. However, it was able to accept a hand-painted drawing of a camel much more comfortably. In some cases, the use of visual tools may also require assistance from artists/designers.*

VERBAL: *Verbal tools are among the simplest to use, since they simply modify already existing patterns of verbal communication between people. They can be used to ensure greater participation from different individuals within a group, and also to bring out nuances of thought and opinion that may not easily come out through a casual conversation or discussion. These tools may, however, be difficult to use if there is a language barrier between the facilitator and the community. They also require special attention to be paid to documentation through writing, audio or video to capture the ideas that they spark.*

DRAMATIC: *Dramatic tools are the most comprehensive kind of tool since they have the capacity to bring together textual, visual and verbal tools, along with the use of other traditional forms of expression, like music and dance. Since they require extensive physical, mental and emotional engagement, they can also be the most powerful in communication between the facilitator and the community, and can bring out important nuances. Dramatic tools also have the advantage of being able to break barriers of text and language, as well as other social barriers, and build greater trust between facilitators and the*

community. Dramatic tools, however, may be difficult to use for facilitators without at least an initial training in the use of theatre for facilitation, and may often require the assistance of a theatre artist in understanding how to use them for facilitation in a protocol process. They also require special attention to be paid to documentation, through writing, audio or video to capture the ideas that come out through these tools.

The community's comfort level with text, visual art forms, language, and physical expression, can be gauged through initial meetings with the community and by exploring and understanding the community's traditional forms of creative expression and decision-making. The demographic composition of community meetings is also important. For example, it may be more appropriate to use verbal tools in a meeting with community elders than dramatic ones. The decision as to which category of tools is most useful should take these factors into account, and designing the process to use the community's own art forms (or as close as possible) can increase its effectiveness.

Each tool has further explanation to help facilitators decide on which ones will be appropriate for a given process, including guidance on the context or process for which that particular tool is most useful. The same tools can sometimes be used at different stages of a community protocol process and for different purposes. For the sake of brevity and clarity, the tools have only been mentioned once in this booklet. The tools do not stand alone, and can and shoul be combined with other tools and methods in the course of the protocol process.

The tools below are not a comprehensive list, and are aimed at being a reference point only. For each process, only a few of the possible tools that can be used have been listed here, based on the experience of the authors. Additionally, the steps provided serve as a general guide, but in some cases more detail will be needed to utilize a particular tool. Each tool has a "resource" section where further instructions can be found if necessary. The facilitator should use her creativity along with the guidance provided in the Booklet to engage in a meaningful process.

Elements

1. FACILITATOR'S PERSPECTIVE

A key component of developing a protocol is the bringing together of multiple perspectives during the process. To do this, it is important that there is full and complete trust within the group and between the group and the facilitator. This is particularly important if an external facilitator leads the process.

a. Principles for Facilitators

Creating a safe space: It is vital to create an open and safe space for all participants. This includes:
- ensuring that meeting spaces are accessible and safe;
- ensuring mechanisms are put in place for ensuring confidentiality of sensitive information;
- building trust between participants and facilitators;
- accepting all opinions with a non-judgmental attitude.

Community ownership: the participants in the process and the larger community must feel ownership over the process. This includes:
- ensuring transparency and accessibility of all information;
- ensuring inclusion of marginalized groups or individuals in the process;
- respecting community opinions on process.

Engaging with community members in an appropriate manner:
The onus is upon the facilitator to ensure that engagement with the community is on their terms. This includes:
- engaging in a manner that is respectful of their values and customs;
- ensuring that tools and methods chosen are based on the community's comfort levels. Be creative in using the community's cultural practices. For example, use traditional drums or singing during meetings; if communities are uncomfortable with reading and writing, use dramatic tools instead.

Documentation: It is the facilitators' responsibility to ensure appropriate documentation of information throughout the protocol process:
- ensure active documentation of all processes, interesting points that came out during the conversation etc;
- where possible, have community members capture the information;
- ensure that the result of the documentation is accessible to all the participants.

b. Tools to Build Cohesion and Unity within Groups

A strong group dynamic is very important to a protocol process. The tools below are designed to do the following:
a. Build cohesion and trust within the group that is participating in the protocol process;
b. Break down pre-existing social, political and inter-personal dynamics between individuals in the group;
c. Help individuals in the group connect or reconnect on a personal level to ensure trust and confidence in everyone to participate in the process.

These activities, along with other games and tools referenced at the end of the section, can be used in the beginning of the protocol process to establish trust and comfort between participants, and may be used at different points during the process for the same purpose. It is often useful to use some of these tools in the beginning of community meetings.

1. Semi-circle sound and movement

Builds group cohesion

DRAMATIC

This is a game that creates coordination between members of the group by pushing them to listen and respond to the actions of their neighbours. It can also help the facilitator assess the group's comfort levels with each other, and with physical forms of expression.

Resource: Adapted from notes taken by Natural Justice during Adivasi Applied Theatre – facilitation training notes (Hastings, 2015)

PROCESS

- The group stands in a semi-circle.
- A participant from one end of the semi-circle (Participant 1) begins walking very slowly to the other end of the semi-circle. The person standing adjacent to Participant 1, designated as Participant 2, initiates a sound (*for example: sound of a motor car, a bird call, laughter, a vendor yelling out wares etc*.)
- Participant 1 identifies the sound, and responds with an associated action (*for example: an action of driving a car, flapping hands to indicate flying etc*.), while continuing to cross to the other end.
- Once Participant 1 has reached the other side, the same process is repeated with Participant 2, and so on until every participant has crossed to the other end of the semi-circle.
- Once this is completed, the participants find their way back to their original positions by repeating the process in reverse, i.e. the action is initiated first, and the participant adjacent to the action-maker identifies the action and responds to it with an appropriate sound.

2. Flocking

***Addresses pre-existing power dynamics***

DRAMATIC

This exercise is meant to break down hierarchies and power dynamics that may already exist among the participants by giving every person a chance to lead a smaller group in an activity. It can be used to establish a sense of equality among all the individuals in the group and the validity of all perceptions and opinions.

Resource: Adapted from Adivasi Applied Theatre – facilitation training notes (Hastings, 2015)

PROCESS

- The larger group is divided into smaller groups of four each.
- Each group typically stands in a diamond formation, facing one direction.
- The person in the front, when facing a particular direction (Participant A, see diagram on the following page), starts a movement that is mirrored by everyone in the group.

- After a few seconds, in the course of movement, Participant A should change the direction he or she is facing. When that happens, and everybody turns to follow Participant A, someone new will now be in the "front" of the diamond (Participant B). Leadership now shifts to Participant B and the exercise continues.
- For example, in the figure below, Participant A starts as the leader in the left diagram. When Participant A turns to his right, Participant B now becomes the leader.

A is 'leader'   B is 'leader'
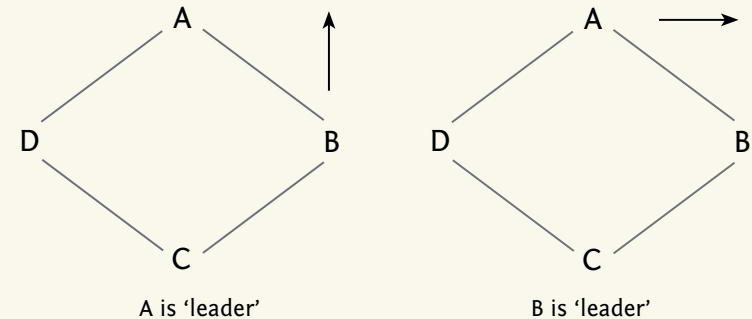
3. Sound gates

Establishes trust between individuals and the group

DRAMATIC

This exercise achieves its purpose by closing off the visual sense, and pushing participants to rely on each other to navigate a space.

Resource: Adapted from Adivasi Applied Theatre – facilitation training notes (Hastings, 2015)

PROCESS

- Half the group is turned to one side facing the wall (or stand with their eyes closed), the other half is paired, and the pairs are spread throughout the space.
- Each pair decides on 3 sounds: normal, welcome and danger.
- The pair now clasps their hands together to create an arch or gate.
- The other half of the group now walks through the space with their eyes closed, being guided by the sounds.
- Normal sound is made continuously by the pair.

- As a participant approaches a gate, the pair makes their welcome sound. And if the participant is about to collide into another participant, the pair makes the danger sound. Each pair is responsible for ensuring the safety of the persons near them.
- Switch the groups and repeat.

2. COMMUNITY BACKGROUND

The Community Background element includes the following sub-elements: a) identity of the community, b) community governance structure, c) purpose of the protocol, and d) other stakeholders.

a. Identity of the Community

It is important for the facilitators to understand the context of the community, its territories and resources, how community members perceive themselves, and the multiplicity of dynamics playing out within the community. It is also important for the community members to understand and recognize differences among themselves, while also creating a group identity for the purpose of the protocol that individuals within the community are comfortable with.

i. Exploring multiplicity of identities

Different individuals within the community will have different ideas and expressions of their identities, both as individuals and of the community itself. The tools below help the community explore the multiplicity of identities that exist within the community itself.

4. DJing images

DRAMATIC

Explores multiple perceptions of issues relevant to the protocol

This exercise uses physical postures adopted by participants, or "body images" to understand the group's perceptions of particular concepts. This tool is quite complex, and it may be difficult to facilitate for someone who does not have experience with it. It is strongly suggested that before using this tool, facilitators refer to the resources included, and take assistance from a theatre artist in the use of this tool, either as a co-facilitator or by undergoing initial training in its use. The description below is only meant to serve as a reference for those who have some

experience with the tool, and may not be useful to someone with little or no experience in use of participatory theatre for engagement.

Despite the difficulty of concisely describing this tool, it is included here because of its power to elicit multiple meanings, and understand the community at a very deep level. It asks individuals within the group to showcase their associations to a concept both individually and in relation to other images. By creating multiple individual images, and a simultaneous group image, it allows for a multiplicity of meanings. For example: in the context of mining, 'water' could mean 'life' but also 'pollution'; both these ideas can be brought out through the same group image.

Resource: Adapted from Forum Theater for Teachers, MacDonald and Rachel, Workshop at Athens Conference 2000, available at http://organizingforpower. org/wp-content/uploads/2009/03/games-theater-of-oppressed.pdf. For more information, see Drama Resource, available at http://dramaresource.com/ image-theatre/. For an example, see Teachers Act Up, Image Theatre, available at https://www.youtube.com/watch?v=iV_3gVaGHrM

PROCESS

- Participants stand in a circle.
- The facilitator selects a word that is relevant to the community she is addressing (for example, "water") and announces the word to the circle. A participant then comes to the centre of the circle and using his or her body creates an "image" by adopting a posture that is representative of what the word means to her or what she associates it with. For example, 'water' may lead to a person adopting the posture of drinking.
- A second participant now enters the circle, and, adopting their own body posture, creates an image that can be related to the first image, or an entirely different image displaying what the word means to the second participant.
- Every participant similarly enters the centre of the circle, and adds to the scene that is being created in the centre. After the entire group is in the image, ask the group to hold the image for at least 5 seconds in silence. Then, you can announce the next word.
- When the group strikes an image that appears to bring out a strong issue or idea, you can add movement and sound to the image to bring out the idea more clearly, by following these steps:
  - Invite each participant to saturate their minds with the inner voice of the position they are in. For example: if the image is that of a person drinking water, this person may be enjoying

the freshness of the water, or may be finally getting a drink after a hard day's work, or she may be unhappy with how polluted the water is.

○ After 5-7 seconds, the facilitator says "Go!" and asks everyone to simultaneously speak the inner monologue out loud in free form for 5-7 seconds until the facilitator says "Stop!" and everyone returns to their original image.

○ Now ask everyone to take the essential bit from what they just said – a word, sound or short phrase, which represents the entirety of their thought process or is the most powerful word or phrase to communicate their thoughts.

○ This time when the facilitator says "Go!" everyone says that essential bit over and over till the facilitator says "Stop!" and the original image is restored.

○ Now ask participants to add a short, repetitive movement with the image to go with the essential bit. For example, in the image of a person drinking water, he may add a movement of spitting out the water.

○ When the facilitator says "Go!" everyone does the sound and the movement together until the facilitator says "Stop!", and everyone returns to their original image.

● To allow for each idea to be heard and understood by the rest of the group, the facilitator taps one individual at a time. When the facilitator taps an individual, that person does their sound and movement once, and afterward returns to the still image. The rest of the group continues to hold the image.

● As the facilitator, feel free to play with different juxtapositions to bring out the nuance of the idea. For example, if someone has a strong idea, tap that person multiple times, or tap persons representing contradictory meanings one-after-another etc. This allows the group to reflect more deeply on the multiple meanings of the image.

● Debrief with the group on what meanings and associations were brought out, and reflect collectively on what it means for the community.

NOTE

● The kind of words and gestures used – are they words and gestures of anger, supplication, superiority, love etc.

● Differences or trends between individuals based on gender, race, class, caste etc.

● Noticing these subtle patterns allows the facilitator to understand the kind of emotional associations that are attached to particular meanings, as well as the differences of opinions within the community based on gender, race, class, caste etc. The facilitator can draw on this understanding to guide the protocol process by ensuring inclusivity of different meanings and identities, and working on issues that may come up through the exercise.

5. Privilege Walk

Explores dynamics of privilege within the community

DRAMATIC

This exercise is used to facilitate exploration of the idea of privilege within the community. Privilege tends to be invisible to those who are privileged. That is, when we receive privilege based on particular factors, we tend to not recognize the boosts in position that accumulate over time from those privileges. The point of this exercise is to raise awareness of how privilege based on gender, class etc. function. Whether we are highly privileged, moderately privileged or lack privilege, it is possible to behave in ways that level the playing field for everyone. In this context, it can help community members identify internal power dynamics and inequalities and create empathy among individuals and groups, particularly marginalized groups, within the community.

Resource: Adapted from University of Michigan Privilege Walk Activity, available at https://ginsberg.umich.edu/content/privilege-walk-activity.

PROCESS

● Take note of different identities that individuals within the community carry. For example: old woman, disabled man, widow, landless person, educated man etc. Now assign each of these identities to one person within the group until all possible identities are exhausted. Try to assign roles different from the real identities of the participant.

● Have all the participants stand shoulder-to-shoulder in a line, and begin asking questions relating to the privilege enjoyed by the different individuals within the community. Questions asked will be dependent on the context of the community involved in the

protocol process. The questions should be designed as yes or no questions, such that a 'yes' represents privilege and 'no' a lack of privilege. Some examples are provided below.

- If the answer to the question is yes, the participant moves a step forward; if the answer is no, the participant moves a step backward.
- Once a series of 8-10 questions have been asked, place a waste-paper basket at the front of the room, and ask each person to throw a crushed piece of paper into it, from their position in the room. This allows the group to reflect on the consequences of privilege or lack when trying to achieve certain goals, personal, social or political.
- After the exercise, ask the community to reflect together on the idea of privilege within the community. Ask the participants how they felt about being in the shoes of a particular person.

Potential Questions:
- Is it easy for you to approach local authorities?
- Is your voice heard in community meetings?
- Do you have food security?
- Do you feel safe traveling alone?
- Can you find jobs without much hardship?
- Are you afraid of state-sponsored violence against you?
- Do you feel adequately represented in local or national decision-making bodies?

ii. Mapping and identifying territories and resources
Identification of territories and resources are an important part of establishing a sense of group identity within the community. This is particularly important where communities have lost lands and/or their sense of community is depleting due to loss of traditional practices, customs or governance structures.

6. Sketch map

Maps the community's territories

VISUAL

A community sketch map is used to identify locations of important resources or sites, systems of resource use, and customary or property boundaries. This tool can be adapted and used with other visual tools to provide a visual overview of what comprises the community's landscape.

Resource: Adapted from 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008) and draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12). For more guidance, see also Biocultural Community Protocols: A toolkit for community facilitators, available at http://naturaljustice.org/publication/biocultural-community-protocols/.

Example of a sketch map showing location of different aspects of a community's landscape

PROCESS
- Facilitate a discussion about key physical features that the community would like to include, such as lakes, forests, and sacred sites.. Not every feature has to be included, especially if it will make the map too crowded or confusing to be useful.
- Consider developing a legend for different symbols or colours that may be used.
- Using large sheets of paper or a blackboard, begin by marking the location of important reference points such as houses and transportation routes.
- If available, GPS devices can also be used to develop maps. For this kind of mapping, divide the group into smaller groups of 5-6 persons, each with an appointed leader. Ensure that each group has at least one person who can use a GPS device. Each group then marks each site that they wish to put on the map.

- Depending on the dynamics within the community, separating the larger group into women, youth etc. can help increase participation.
- Hold a plenary session or broader group discussion to verify the information and gather further inputs or suggestions.
- Transcribe the final version of the map and make at least one copy for safe-keeping.

7. Rhythm categories

VERBAL

Maps natural resources of the community

This exercise can be used to identify important natural resources within the territories that are used by the community and to facilitate a discussion about the importance of biodiversity to the community.

Resource: Adapted from Adivasi Applied Theatre, facilitation training notes (Hastings, 2015)

PROCESS
- With the group standing in a circle, the facilitator starts a beat, and picks a topic. For example, trees in the forest
- Going around the circle, each person in the group names one item in the topic (for example, name of a tree) without missing the beat.
- Names cannot be repeated. Keep going until everyone has run out of names.
- Start the next round with a different topic.

NOTE
- Make sure that the names are being recorded. You could facilitate a discussion on resources that are being impacted by extractive or infrastructure projects.

b. Community Governance Structure

Assessment of the community's power dynamics, as well as formal and informal leadership structures, is a key step in the protocol process.

The following tools are meant to analyse internal governance structures and identify key players, for example, who can lead on

community protocol process, leaders whose consent may need to be sought, persons who have influence in local politics etc.

8. Identifying key actors

VISUAL

Identifies key actors

To identify actors who have influence over relevant issues, such as a particular mining project, a particular resource or the community's overall ways of life.

Resource: Adapted from Stakeholder Power Analysis (IIED, 2005), available at http://www.policy-powertools.org/Tools/Understanding/docs/stakeholder_power_tool_english.pdf.
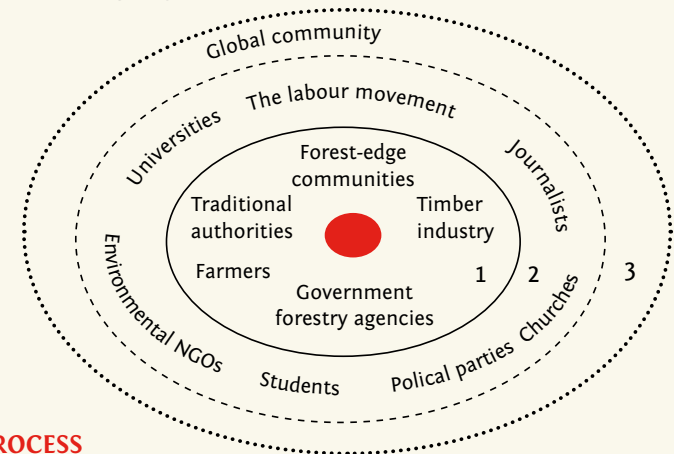
PROCESS
- Prepare a large bull's eye diagram (like the one shown above adapted from Kotey et al., 1998) with several concentric circles.
- Seek agreement about the focus of the analysis, for example, a particular mining project or a particular resource.
- Facilitate a discussion to identify key actors (companies, institutions, government ministries, groups, or individuals) that affect the mining project, the resource or area.
- Rank them according to power or degree of influence. This can be done with numbers, icons, or different sizes of paper.
- Label them on the diagram. The ring closest to the centre represents the most influence and the outermost ring represents the least influence.

Assessment of the community's power dynamics, as well as formal and informal leadership structures, is a key step in the protocol process.

Abc

TEXTUAL

9. Stakeholder mapping

Analyses stakeholders within the community

Stakeholder mapping and analysis helps in understanding an issue more holistically, and provides clarity on strategies to address each stakeholder.

Resource: See Stakeholder Power Analysis (IIED, 2005) available at http://www.policy-powertools.org/Tools/Understanding/docs/stakeholder_power_tool_english.pdf.

PROCESS

- Stakeholder mapping and analysis can be done on a chart. First, set out a list of primary (directly affected) and secondary (indirectly affected) stakeholders.
- Consider whether any stakeholders are missing. For example, direct and indirect stakeholders may have representatives who were not initially included. For example, a company may outsource management of labourers to a different company or contractor. Mind mapping (refer to Mind Mapping tool) will help with this section of the exercise to make sure all possibilities are covered.
- After this, the stakeholders that have been identified can be analysed using questions. For example: how are they affected? What influence do they have? If the group is large, this exercise can be carried out in smaller groups using charts.
- The second part of this exercise involves listing the stakeholders' interests, value and objectives, needs, influences and power sources, resources, relationships and networks – these can be done in the form of lists on a chart or diagrammatically to show the level of influence, for example, using a bull's eye diagram (see figure on previous page).

- Divide the larger group into smaller groups of 5-6, and discuss within the smaller groups how the analysis can be a step towards a solution to the issue. Listing these and then sharing in the larger group will help obtain a range of ideas.

c. Purpose of the Protocol:

A protocol process can have different purposes, and the physical form of a protocol can be targeted toward different audiences. It is important for the community to decide at the outset what the purpose of the protocol is. This will help to define the protocol's scope and focus, which in turn will provide some guidance for how the process should be undertaken in the initial stages. However, community needs and priorities change over time, and the protocol process should remain flexible in order to take such potential changes into account. It is not uncommon for the purpose of the protocol to change over time depending on the communities' needs.

10. Mind map

TEXTUAL

Elicits ideas from a group of people and finds links between them

This tool can be used to encourage a wide range of ideas from a group of people. It is often used to elicit a number of responses without judgment or analysis in order to encourage creativity within the group.

Resources: Adapted from European Commission, Online Foresight Guide available at http://forlearn.jrc.ec.europa.eu/guide/4_methodology/meth_crea brainstorming.htm.

PROCESS

- Divide the larger group into smaller groups.
- On a large piece of paper, write down broad questions that you want to ask the group. Make sure that the questions are open-ended. Some examples are provided below.
- As answers come up, write down key-words or themes, and ask follow-up questions on them. Simple questions like why, how etc. can lead the group into interesting discussions.
- Link the keywords together to indicate the flow of thought.

Questions
- What is your traditional relationship with natural resources?
- What are the changes you have noticed within your community in the last 20 years?
- What is the role of extractives and infrastructure projects in your life?
- How can the relationship with natural resources and other traditions be sustained?
- What issues, needs, interests or desires does the community want to communicate to external stakeholders?

11. Forum Theatre

DRAMATIC

Stimulates creativity and thinking, trust and local identity

This tool can be adapted and used to explore inter-personal dynamics and people's ideas about how to improve the outcomes of a problematic scenario. It encourages dialogue and constructive action between people with different opinions or approaches to the same issue. The group can use this tool to think about the purpose of the protocol and the potential consequences of certain actions within the protocol process.

*This tool is a very powerful way of bringing out multiple meanings, issues and solutions but as with the **DJing Images** (Tool No. 4)., it may be difficult to facilitate a forum theatre exercise without prior training. It is suggested that facilitators take assistance from a theatre artist in the use of this tool, either as a co-facilitator or by undergoing initial training in the use of the tool.*

Resource: For more information, see Earth Rights International, Forum Theatre: Strengthening Community Understanding of Free, Prior and Informed Consent, available at https://www.youtube.com/watch?v=0ol5_F_mt98. Also see Re-Create the ARTitude through Forum Theatre (a.r.t Fusion) and Forum Theater for Teachers, MacDonald and Rachel, Workshop at Athens Conference 2000, available at http://organizingforpower.org/wp-content/uploads/2009/03/games-theater-of-oppressed.pdf. For an example of Forum Theatre see TEDx-ColumbiaSC, Forum Theatre Performance – Shannon Ivey and STATE of Reality available at https://www.youtube.com/watch?v=vcLcXeXJVDU

PROCESS

- Work with a small group of about 3-5 people in the community to prepare a short scenario about a particular problem or conflict

that is relevant to the community.

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

Other relevant tools: World Café (available at http://www.theworldcafe.com/); Visioning (Exploring Sustainable Communities, How to Conduct a "Visioning" Exercise available at http://www.gdrc.org/ngo/vision-dev.html). For more information see Framework Methodology, Annex III, pp. 71-73.

d. Other Stakeholders

The community needs to consider the impact of the protocol on external stakeholders, as well as the influence that external stakeholders may have on the process of the protocol or on the progress of the extractive industry or infrastructure project. Some of the tools from *Section 2. B. Community Governance Structures* above may also be used for this analysis. This section is focused on external actors and is meant to take stock of the external influences and pressures that play on the community, and the power dynamics that govern these.

12. Columbian Hypnosis

Explores power dynamics

DRAMATIC

This tool is adapted from one of the games designed by Augusto Boal in the Theatre of the Oppressed, and can be used to assess and discuss hierarchies and other power dynamics within the community, or of outsiders with relations to the community.

Resource: Adapted from Forum Theater for Teachers, MacDonald and Rachel,

Workshop at Athens Conference 2000, available at http://organizingforpower. org/wp-content/uploads/2009/03/games-theater-of-oppressed.pdf. For an example of Columbian Hypnosis, see Katherine Burke, Columbian Hypnosis, available at https://www.youtube.com/watch?v=_AaVRreMCPY.

PROCESS

- The group forms a circle. One person (Participant 1) comes into the centre of the circle and stretches out both her arms sideways, with palms perpendicular to the ground. Two more people then enter the circle, and put their faces in front of the palms of Participant 1 (see Columbian Hypnosis video above for an example).
- These two people then similarly stretch out their arms, and add more people.
- Everyone in the structure tries to keep their face aligned to the palm "controlling" them, as Participant 1 moves through the space.
- Facilitate a discussion within the group about the power dynamics within the hypnosis and how it relates to their real life.

Potential Questions

- Who is the person in the middle?
- What does this structure look like to you/What does this structure remind you of?
- How does the person in the middle feel? How do people on the extreme ends feel?

3. PROCESS

The Process element includes the following sub-elements: a) **participants**, b) **meetings and documentation**, c) **timing**, d) **resources**

a. Participants

An inclusive process is integral to developing a community protocol, and care must be taken to ensure adequate participation from all groups within the community, especially those that are marginalized. The tools in this section are focused on ensuring greater participation of individuals within a group, and ensuring that different persons and groups from the community are included in the protocol process.

13. Semi-structured interview

VERBAL

Includes marginalized groups in the protocol process

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

Resource: Adapted from 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008), available at http://repiica.iica.int/docs/B1013I/B1013I.pdf.

PROCESS

- Identify groups that may not otherwise have a voice in general community gatherings.
- Determine a general interview guide, based on the nature of the group or person.
- When selecting members of the community with which to engage in the dialogue, choose people with a wide variety of experiences. For example, when formulating a women's group, include women farmers, women who may run a small business, women who have domestic duties and are primary caregivers to children, women who are active in the community etc.

Potential Questions

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

Other relevant tools: Evan Hastings, a shadow-theatre artist, has developed several dramatic tools to encourage inclusivity. These can be used to encourage inclusivity of all community members, especially if there are marginalized groups that exist. For more information see http://evanhastings.blogspot.com.

b. Meetings and Documentation

Different issues, needs and interests of the community will need to be assessed and prioritized for inclusion within the community protocol. The tools below are designed to enable the community to analyze different issues and prioritize among them.

14. Tool: Speed Dating

VERBAL

Helps discuss issues that individuals might not be comfortable raising

Sometimes, individuals may be uncomfortable sharing issues in a group. This tool can be used to allow individuals within the group to talk to each other one-on-one and bring out personal stories. This tool also ensures that all voices, especially of those that are marginalized, are heard and included in the process.

Resource: Adapted from draft of report on BLINC – Community Rights Workshop (Natural Justice, 2015)

PROCESS

- Participants sit in two rows facing each other. The facilitator will keep time and tell the participants when to start. The facilitator also decides which side should start.
- The facilitator should also provide the participants with some topics to discuss. In this case, since the aim of the tool is to bring out details on issues, the topic of discussion could be a particular issue that was brought out earlier, for example, a particular mining project or water pollution; or it could be more general, for example, relation of the person to their forests.. Specific questions about these topics are provided below.
- Once the facilitator says "Go," each person begins talking to the person opposite them.
- When the count stops (in 1-3 minutes), every person moves one place to their right, and starts a conversation with a new partner.
- This process is repeated until every person has had the chance to talk to everyone else in the group.
- Afterward, the facilitator can lead a discussion on any common ideas or issues that came out through the conversation, or to talk about any personal story that resonated strongly with the par-

ticipants, while ensuring anonymity of the individual. The larger discussion can help the community understand the issues, and can also lead into a discussion on prioritization of issues.

Potential Questions:

- Why is this issue or opportunity important to you?
- What do you feel will be the impact on you personally?
- Are there particular persons or groups responsible?
- Do you feel like this is an issue that can be resolved? Do you think this is an opportunity that can be utilized?

Abc
TEXTUAL

15. Assessing Key Opportunities and Threats

Identifies opportunities and threats

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

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

PROCESS

- Facilitate a brainstorming session around the opportunities and threats with respect to the extractive industry or infrastructure project.
- Work with a small group to identify criteria for assessing the opportunities and threats. Such criteria should help the community to prioritise and decide on addressing the threat or opportunity.
- Create an organised table with the opportunities and threats listed in separate columns across the top and criteria listed in separate rows on the left-hand side.
- Encourage the small group to consider each opportunity or threat in turn and assess it according to the criteria.
- Facilitate a process of prioritization, based on magnitude of impact or ease of addressing it.
- Once key opportunities and threats are prioritised, you could facilitate a process of visioning and planning to address them.

16. Mapping project impacts
VISUAL

Identifies issues specific to infrastructure and extractives projects

To identify important natural features in a community's landscape, and identify the location of a project, or its impacts (such as pollution or acquisition over traditional territories and natural resources) over time.

PROCESS:

- Facilitate the development of a community sketch map. Refer to the Sketch Map Tool in Section 2.A.
- Facilitate a discussion about the impacts of extractive industries or infrastructure projects.
- Pinpoint key areas on the map that have been impacted upon by projects, such as roads, housing, school, natural resources such as water sources, forests, land for grazing etc.
- Distinguish between direct and indirect impacts of the project such as dust, noise, and odour.
- Work to attempt to gauge when the impacts are at their worst (that is, when the wind blows in a particular direction, at different times of day, or different seasons).
- Facilitate reflection on these impacts and rank them according to how badly they affect the community.
- Consider developing a legend for different symbols or colours that may be used.
- Hold a plenary session or broader group discussion to verify the information and gather further inputs or suggestions.
- Transcribe the final version of the map and make at least one copy for safe-keeping.

c. Timing

The protocol process has to balance the timeframe that the community is comfortable with, with the speed and progress of the extractive industry or infrastructure project that the protocol may be trying to address. The tool below is designed to understand the community's timeline and design the protocol process accordingly.

17. Decision-making calendar

Understands community timeframes

VISUAL

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

Resource: Adapted from 80 Tools for Participatory Development (Inter-American Institute for Cooperation on Agriculture (IICA), 2008), available at http://repiica.iica.int/docs/B1013I/B1013I.pdf.

PROCESS

- Identify what the community perceives as a full cycle of seasons (for example, cultivation, migration cycles or seasonal weather patterns).
- Seek agreement on an appropriate way to depict that cycle such as in a linear graph, sketch map, or otherwise.
- Facilitate a discussion about key decisions made within each season, for example decisions about the timing, location, and methods of livelihood activities, festivals, meetings etc. Record the information on the cycle.
- If available, include details such as who is involved in the decision-making process, when meetings are held, how others can provide input, and so on.
- Facilitate a discussion about the extent to which the broader community is aware of this information.

Other relevant tools: Historical Timeline (see Assessing Resilience in Social-Ecological Systemcs, available at http://www.redagres.org/Assessing%20 Resilience%20in%20Social-Ecological%20Systems.pdf, Assessing Community Capacities (see page 41 of Biocultural Community Protocols: A toolkit for community facilitators, available at http://naturaljustice.org/publication/biocultural-community-protocols/).

4. OUTCOME

The outcome of the process includes more than just physical form of the protocol itself. Facilitators should also consider the results of engaging in the process, as well as how to ensure that there is follow up. The Outcome element includes the following sub-elements: a) **form of outcome**, b) **uses of the protocol**; c) **potential consequences**, d) **monitoring**.

a. Form of Outcome:

Discussion with the community is essential to brainstorming and deciding upon what form the protocol will eventually take. Depending on the context, it may be useful to initiate this in the beginning of the process, as well as revisit it continuously as the process moves forward.

18. Brainstorming

Encourage multiple ideas

VERBAL

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

Resource: Adapted from European Commission, Online Foresight Guide available at http://forlearn.jrc.ec.europa.eu/guide/4_methodology/meth_crea_brainstorming.htm.

PROCESS

- Encourage community members from different sections of the community to join the brainstorming session.
- Divide larger groups into smaller groups to ensure diverse participation from community members.
- The facilitator introduces the topic and the purpose of this session. The topic could be specifically on the form that the protocol would take, or it could be on broader issues that might be relevant to that decision. He begins the discussion by asking specific open-ended questions. The answers, reactions, comments,

contributions should be collated and written down without any comments or further analysis in order to encourage participants to speak their minds. Demands for clarification are allowed and ideas may be spun off from earlier ideas. The first phase ends after a set time, when a sufficient number of ideas has been generated, or when the group feels comfortable that there are no more ideas to add.

- After this phase has ended, ideas collected previously are revisited, clustered, prioritised, etc. Participants are encouraged to ask clarification or more information on what was meant by each item. The material is then taken as the basis for more analytic discussion.

b. Uses of the Protocol

A community protocol is not mere documentation, and is rather a process geared towards creating community-led change. This change can be primarily within the community and/or it can take place in relation to external stakeholders. One major step in the process, however, is the development of a physical form of the protocol that can be shared with external parties. At each stage of the process, the community can ask itself how it wants to "use" any accomplishments to that point for further advocacy.

Abc

19. Action planning

Plans action based on community vision

TEXTUAL

The purpose of this tool is to build on the community's initial vision and the resources that they have at their disposal in order to determine the community's plans and priorities for development. This is based on recognized pre-existing strengths of the community.

Resource: Adapted from draft Strengthening Endogenous Development in Africa: A methodological guide (CIKOD et al, 2011-12) (available at http://www.groundswellinternational.org/wp-content/uploads/Strengthening-Endogenous-Development-in-Africa-1-July-2010.pdf).

PROCESS

- Use this as a follow-up to community visioning, or other processes of community reflection, by encouraging participants to engage in decision-making based on the vision.

- Review the responses provided and ask for further thoughts. Identify potential clusters or themes.
- Discuss how the topics could be represented in a collective community action plan. Are there clear targets, goals and activities? What format would be most appropriate and meaningful?
- Once the action plan has been finalised and agreed upon, record it and make at least one copy for safe-keeping.

Potential Questions

- How will you use your protocol to make the community's goals and visions a reality?
- What are the targets and activities that will need to occur to use the protocol the way the community wants to?
- Who will be involved in carrying out specific activities, if any, called for in the protocol? Do they have the skills and capacity? What further resources do you need?
- When will these activities be implemented?
- How will an impending project affect the community's protocol?

c. Potential Consequences

The consequences of the protocol process within and without the community may be numerous. The facilitator should consider proactively identifying and planning for dealing with these consequences before the use of the protocol.

20. Focus Group Discussion

Encourages deeper reflection

VERBAL

This tool can be used to allow participants to freely express ideas in a small and safe group. It can also be useful to brainstorm on specific questions, and can bring out detailed responses and deep insights.

Resource: For more information, see Guidelines for Conducting a Focus Group available at https://assessment.trinity.duke.edu/documents/How_to_Conduct_a_Focus_Group.pdf.

PROCESS

- The group sits in a circle, and decides on what they want to achieve at the end of the discussion. The facilitator asks open

ended questions or can choose any views or observations from activities like mind mapping, DJ-ing images etc. which may have been used in the protocol process.

- She then reiterates the views expressed to the questions so the group gets a chance to reflect and modify or add to it.
- The facilitator must be alert to notice if views are shot down by the group, in which case she can express them again and make sure that everyone's views are included. The facilitator must also make sure that the discussion does not digress too much, and achieves the stated purpose.

d. Monitoring

A community's protocol will evolve as time passes and circumstances change. The community should revisit its protocol periodically to determine whether it still reflects their visions, dreams and plans. It is also important for the community to monitor the changes in its landscape. The tools below are designed to help assess changes within the community and their landscape after the protocol has been developed and used for a certain period of time.

Abc

TEXTUAL

21. Community Health Impact Assessment Worksheet

Assesses impacts of an extractives or infrastructure project

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

Resource: Adapted from material provided by the Centre for Indigenous Knowledge and Organizational Development (CIKOD). For full version see p. 43 of Biocultural Community Protocols: A toolkit for community facilitators, available at http://naturaljustice.org/publication/biocultural-community-protocols/.

PROCESS

- Collate as much information as possible about the proposed extractive industry or infrastructure project.
- Reflect on existing impacts, if any, of the project.
- Facilitate a broad community discussion to identify key aspects of material, social, cultural, and spiritual wellbeing. For example:

food, health, shelter, education, tenure security, equity, and freedom to practice traditions etc.

- Create an organized table of the different aspects of wellbeing arranged under their respective headings.
- The table should include columns with space to indicate whether the proposed activity is likely to have a positive, negative, or neutral or no impact.
- Going through each row in the table, assess the likely impact of the proposed activity on the different aspects of wellbeing. The score could be a simple 'yes' or checkmark. It could also be more descriptive or provide a relative value on a defined scale.
- After the assessment worksheet is complete, facilitate a community discussion about the results. Overall, is the proposed activity likely to have a positive or negative impact on community wellbeing? Where is more information needed?
- Consider creating an action plan.

Other relevant tools: Human Rights and Environmental Monitoring (see Guide to Human Rights Monitoring, Documentation and Advocacy, available http://www.theadvocatesforhumanrights.org/a_practitioner_s_guide_to_human_rights_monitoring_documentation_and_advocacy).

5. LEGAL LANDSCAPE

This element encompasses the customary laws that govern the development of the protocol, as well as the concept of legal empowerment, which is based on the principles that law should not remain a monopoly of trained professionals and that alternative forms of dispute resolution (such as dialogues) are often more attuned to local realities than formal legal processes.

a. Customary Law

The tool below is aimed at helping bring out the community's customary laws and governance structures. Encouraging dialogue and reflection on customary laws should be an ongoing process throughout the protocol process.

22. Mapping of Laws

VISUAL

Identifies customary laws

To identify and record the different traditional rules and norms that are in practice within the community, and to locate them within the territories and landscape of the community. This tool can provide a visual overview of the community's traditional norms.

PROCESS

- Facilitate the creation of a community sketch map (Refer to the *Sketch Map, Tool No. 6*).
- Facilitate a discussion about the traditional rules, norms, customs or practices that affect the resources on the map.
- Split the larger group into smaller groups of 5-6, and continue working with the small group to add norms to the relevant locations on the map. This could be done by labelling or using a different colour or pattern to shade in the relevant area.
- Hold a plenary session or broader group discussion to verify the information and gather further inputs or suggestions.
- Facilitate a discussion about what the map shows, and a reflection on the different rules and norms.
- Transcribe the final version of the map and make at least one copy for safe-keeping.

b. Other Legal Frameworks

A key aim of the protocol process is to provide indigenous peoples and local communities with opportunities to influence policy planning and implementation by making the law more accessible. Providing meaningful information to communities about relevant sub-national, national, regional and international frameworks can be a challenge for a variety of reasons including language barriers, terminology, complexity and technicality of the law. The tool below attempts to address those challenges to present the law in a way that communities can relate to.

23. Three-headed dragon

VERBAL

Critically analyses laws

This tool can be used to both understand the details of a particular law or judgment, and also to critically analyse the advantages and disadvantages of the law. It allows for multiple persons to participate in the debate, thereby creating a collective understanding of the law within the group.

PROCESS

- Participants stand in a circle. Three volunteers from the group come to the centre of the circle, and act as three heads of the same body.
- One head/person represents the 'Good'; the other represents the 'Bad'. The head/person in the centre is neutral. The 'Good' head represents the positive aspects of a particular legislation, policy or case law, while the 'Bad' head represents the negative aspects of the same law.
- Both heads talk simultaneously to the one in the middle, trying to convince him/her of their point of view.
- The centre head can pause and play the different heads as per his or her wish. The centre can also ask for opinions from the rest of the group on which of the heads to listen to.
- The process can be repeated with a different group of three. Set a timeframe – 3-5 minutes for each small group.
- Facilitate a discussion with the larger group on their thoughts about the law. Depending on the knowledge of the community, the facilitator may want to consider bringing in outsiders for some parts of this exercise.

3

DEVELOPING AND USING COMMUNITY PROTOCOLS

Community
Protocols
Toolbox

● ● **3** ● ●

Booklet 3

DEVELOPING AND USING COMMUNITY PROTOCOLS

1. WHY ARE COMMUNITY PROTOCOLS BEING DEVELOPED?

Communities' customary rules and procedures regulating conduct and interactions between themselves and outsiders form an important part of customary law and are codified in many different ways such as oral traditions and folklore, dances, carvings, and designs. Nevertheless, communities' interactions with external parties have often been shaped by those parties and implemented in a top-down approach that disregards traditional laws. However, as legal norms have shifted over the last few decades to increasingly recognize and respect communities' rights, there is growing recognition of the potential usefulness of articulating communities' rules and procedures in forms that can be understood by others. As described in Booklet 1, the term "community protocol" is used here to refer to the articulation of such rules and procedures, although there are other ways of referring to the same concept.

Today, community protocols have been developed around the world by many different communities to address a variety of different challenges. For example, in Argentina, communities responding to lithium mining concessions granted by the government have developed a protocol to articulate processes that must be undertaken to appropriately ensure their participation and consent in decisions that affect them. The protocol identifies the community leadership structure that external parties must engage with when seeking to meet their FPIC obligations. In Kenya, the process of developing a community protocol has brought together over 35 community organizations in response to a massive development project. Many other communities in Latin America, Asia, and Africa have also developed protocols to address similar issues.[1]

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1 For further information, please see www.naturaljustice.org. In addition, please refer to Natural Justice's blog (http://natural-justice.blogspot.com/) for more information on our ongoing work in each region.

2. COMMON ELEMENTS IN COMMUNITY PROTOCOLS

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

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

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

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

ASPIRATIONAL:

Where the community feels that external actions will bring opportunities (for instance, through employment or development of desired infrastructure), communities may unite to set out the ways they wish to engage with external actors, their rights to equitable sharing of benefits, their development priorities, and so on, to ensure it is done on their terms.

DEFENSIVE:

Where a community thinks that an external action is detrimental to their territories and resources, wellbeing and ways of life, or they are not being consulted with respect to a project, a community protocol may be used to defend their rights and to oppose the project, or to assert their rights with respect to consultation, consent, and other such procedural aspects.

Possible stages in a community protocol process

Community consultations about development priorities and potential development of protocol

Community self-identification of catalysts, drafting team and other key functional positions

Series of community meetings and workshops to collate initial information and create space for discussion

Legal aspects addressed, such as relevant national and international laws

Collate information and draft protocol

Community meetings to introduce protocol and identify gaps

Revision of protocol based on new information (if necessary)

Finalisation of protocol, formal approval or adoption by the community, and publication

Presentation of protocol to external parties (if appropriate) as basis for constructive engagement

A protocol process often begins with discussions within the community as to whether or not a community protocol is needed as well as whether they wish to develop a community protocol. If they decide to undertake a protocol process, next steps often include the following (among others, and not necessarily in this order): initial self-identification to determine who shall be included in the process (i.e. who is the community for the purposes of the protocol); identification and training of a core group of community facilitators or researchers; participatory documentation of various kinds of information; a series of workshops to process information and develop joint understandings; and a number of meetings with the broader community for interim review and verification. The process may also include a legal empowerment process and, if appropriate, an introduction of the community protocol itself to the external actors as a means of using it for external dialogue. These different steps are shown in the diagram on the following page. It is important to emphasise that the community protocol process is not bound by a particular order and may omit certain stages, repeat others, and include additional ones; *it is determined by the community*. The following diagram is thus only exemplary.

IDENTIFYING THE 'COMMUNITY'
Who is the 'community' for purposes of developing a protocol? This can be a complicated question that involves a variety of factors such as geographic features, ethnic and tribal identities, livelihoods, and national borders to name only a few. Nevertheless, ensuring clarity about who and what comprise the community is integral to the process of documenting, developing, and using a community protocol. Above all, the community must define itself and determine how to address external issues. In some cases a 'community' for the purpose of a protocol may even combine a number of communities if they are affected by the same threat (e.g. a mine or infrastructure project) or groups from different villages who share a sense of community through a joint profession or common identity (e.g. traditional healers).

See Booklet 4.1 for further discussion on conceptualizing the community.

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3. GUIDING PRINCIPLES FOR FACILITATORS

The following list sets forth some guiding principles that encompass the spirit of good process in developing a protocol. The table below is for ease of reference, but for a more in-depth understanding of the process, facilitators should consult *Booklet 1* (Considerations for Facilitators).

GUIDING PRINCIPLES IN A COMMUNITY PROTOCOL PROCESS

The development of a community protocol is a community endeavour that:

- Is empowering
- Is based on communities' values and procedures, while including the fullest and most effective participation of community members
- Promotes intra- and inter community dialogue, and intergenerational discussions
- Draws on the communities' own resources and resilience
- Further develops community collaboration on useful methodologies

... and focuses on and integrates:

- The values and customs relating to their collective biocultural heritage
- Current strengths, challenges and future plans
- Their rights at the international and national levels that support their ways of life and their corresponding duties

... to produce a protocol that is:

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

... towards:

- Respect for and realization of procedural and substantive rights and responsibilities
- Increasing their agency
- Improving access to information, participation and/or justice
- Improving dialogue with other communities or outside agencies
- Promoting local social, environmental and economic equity ...

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

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

4. HOW ARE COMMUNITY PROTOCOLS DEVELOPED?

a. Facilitating a Community Protocol Process

Facilitation of a community protocol process requires skill, sensitivity, patience, flexibility, and willingness to learn and adapt to changing conditions.

Key qualities of a facilitator in the community protocol process

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

Before beginning the documentation process, it is useful to reflect upon the questions set forth in *Booklet 1* with other community facilitators, catalysts, and leaders.

b. Facilitating a Workshop or Meeting

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

ARRANGEMENTS TO BE MADE BEFORE A WORKSHOP

Draft an agenda
This should be done through consultations with the community in advance.

Identify key discussion points
Discussions need to be focused and contained to key issues. It could involve a process of brainstorming and prioritization from a comprehensive list of topics. Try to find out if there are some topics that people think are important but are unwilling or unable to discuss openly and explore how else they could be considered.

Draft a list of participants to be invited
Who should be invited to participate will depend on the objective and agenda of the particular workshop and if you plan to hold additional ones at another time. It should also be done in consultation with all groups in the community to ensure adequate representation.

Secure logistics and materials
This includes considerations such as location, layout of the space or room, availability of space for small groups or breakaway discussions, reliable electricity source and data projection equipment (if required), pens or markers, paper, flip charts, recording equipment, food and refreshments, restroom facilities, and child care.

Arrange for translation
Accommodate languages that participants prefer to speak, including in written materials. If many languages need to be used, participants could work in smaller groups and later report back with translation assistance. Translation can take a long time, so consider this when planning timing and length of the workshop.

The role of the facilitator during the process is varied. For detailed methodologies of how to facilitate a workshop, see *Booklet 2*.

c. Supporting Community Catalysts

'Community catalysts'who can help to keep the process moving forward are critical to developing protocols. Although they may not necessarily serve as official representatives of the community, there are countless different roles that they could play, including facilitating workshops, presenting at local schools, contacting the media, and organizing a delegation to visit the local government official. They should be comfortable with taking responsibility for a certain part of the process and reporting back to others involved, including the external facilitator and the community leaders.

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

d. Seeking Agreement on the Process

Drawing on the guidance above, ensure the facilitator's role and the overall protocol process are clear to the community at the outset. As emphasised above, the process should be driven by and for the community. Even if there is a considerable amount of organization and resources being invested from outside sources, it is still the community's protocol and they need to have ownership over the process and outcomes. Second, it is important to ensure clarity on roles and responsibilities for various tasks, including documenting and consolidating the protocol. If certain community members or catalysts

commit to key roles, it will become an initiative of the broader community, distinct from and larger than the facilitator's alone. This is crucial for the sustainability of the effectiveness of the protocol for the future. Further considerations are provided below.

SUGGESTIONS FOR SEEKING COMMUNITY AGREEMENT ABOUT THE DETAILS OF A PROTOCOL PROCESS

- Seek permission from the local government structure or traditional authority to hold consultative meetings.
- Use appropriate media to accommodate the local literacy levels. Use community halls, schools, clinics, and churches or places of worship to distribute information and hold meetings.
- Try to be as consistent as possible with information you provide.
- Consult as widely as possibly within the community. This could include holding meetings with specific groups such as married women, youth, and male elders.
- Seek insights from CBOs, NGOs, and any other actors working with the community.
- Work with an initial group to outline and discuss a process for undertaking a protocol and rules of engagement.

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e. Tools

A wide variety of participatory methods can be used to guide any step of the community protocol development process. For instance, a community may decide to use meetings, brainstorming, group discussions, various types of mapping and illustrations, assessment tools, audio/video and/or semi-structured interviews, role plays, and locally appropriate monitoring.

Booklet 2 sets out a comprehensive set of tools to guide workshops and meetings as part of developing a community protocol. Additionally, see Natural Justice's *Biocultural Community Protocols: A Toolkit for Community Facilitators*[3] for more information.

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3 *http://www.naturaljustice.org*

5. USING A COMMUNITY PROTOCOL

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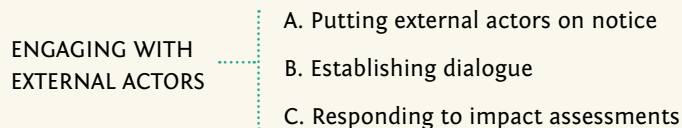ommunity protocols have been or can be used. *Note that it often takes time for a community to finalise its protocol. Accordingly, processes that are part of the development of the protocol are often also useful and/or utilised to advocate or engage with external actors. This is considered "using the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

Various possible uses of a community protocol

Engaging with
external actors

Preventing
and resolving
conflict

USING A
COMMUNITY
PROTOCOL

Negotiating
with external
actors

Advocacy
strategies

a. Engaging with External Actors

There are a number of ways communities can use their community protocol (or community protocol process) to engage with external actors:

ENGAGING WITH
EXTERNAL ACTORS

A. Putting external actors on notice

B. Establishing dialogue

C. Responding to impact assessments

i. Putting External Actors on Notice

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

There are a number of different ways to put key actors on notice. These include sending a letter by post, email or fax; arranging a meeting to deliver the community protocol and discuss it in person; and/or arranging a public hearing with government agencies, other stakeholders and media.

ii. Establishing Dialogue

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

The diagram below outlines key considerations that communities may wish to discuss before and during the process. If the dialogue turns into a negotiation process toward a binding agreement, please refer to the section below entitled "Negotiating with External Actors".

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

EXCHANGE OF INFORMATION

- Sharing of respective contexts;
- Sharing of values and decision-making procedures;
- Sharing of expectations and commitments;
- Sharing of rights-related scenario.

WORKING TOWARDS AN UNDERSTANDING

- What is the common goal/objective of the dialogue;
- Where are possible challenges;
- Identification of relevant standards;
- The rules of engagement;
- Any capacity-building requirements.

MUTUALLY AGREED TERMS

- Agreements of principles of interaction;
- Specific commitments;
- Conflict resolution mechanism.

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

○ What external actors would you like to approach to engage in dialogue?

○ What are their interests and personal or institutional agendas?

○ What are our ultimate goals or aims that we would like to achieve through dialogue? Will dialogue achieve these goals or aims?

○ What are our specific expectations towards the external actor?

○ What are the key issues or plans that the community would like to discuss?

○ Where should you have the dialogue? Will your community's participation be limited if the dialogue is held outside of the community?

○ Who will participate on behalf of the community? How will the rest of the community provide input and feedback?

○ How can we encourage an overall positive atmosphere and attitude that allows for creativity and innovation?

○ How will the dialogue process be financed, especially if it will be an ongoing process?

iii. Responding to Impact Assessments

Impact assessment are intended to evaluate the potential impacts of a proposed extractives project on a range of stakeholders and factors, including nearby communities and the environment. They also provide recommendations to the project proponent as to whether or not the project should be implemented and, if so, ways to prevent and mitigate the likely impacts. Impact assessments can be an important way for communities to engage with external actors and participate in decision-making processes.

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

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

- Assessments are often conducted by professional consultants hired by the project proponents and supporters, which are usually government agencies and companies;
- Assessments tend to use Western scientific methods, sophisticated technology, complicated forms of analysis and technical language;
- Limited timeframes are given to provide comments on assess-

ments that are usually several hundred pages long and not provided in the language of the community likely to be affected;

- Assessments often don't consider social and cultural impacts of a project (including the customary laws, languages and uses of land and natural resources by communities); and
- If the consultants are hired by the same agency or company that is proposing the project, the impact assessment may be biased and not fully representative of communities' concerns.

As a response to these issues, some communities proactively develop and conduct their own impact assessments and attempt to engage with project proponents in multi-stakeholder dialogues and negotiations. The advantage of doing so is that it challenges the accuracy of impact assessments with a community's own factual evidence. Community protocols can add to this evidence in various ways, for example: by contesting the legality of an assessment based on a lack of adequate participation (with reference to the protocol's requirements for participation, consultation and/or free, prior and informed consent); by using community protocol processes such as the Community Health Impact Assessment Tool and others (see *Booklet 5* for more information) to dispute outcomes set out in the impact assessment, mapping to highlight the integrated impacts that a project is likely to have on an ecosystem or community visioning and development plans to put forward their own plans and hopes for development; and by mobilising communities to respond directly and/or seek guidance from experts.

Key Resources on Public Participation in Environmental Assessment Processes
A One-Stop Participation Guide: A Handbook for Public Participation in Environmental Assessment in Southern Africa (SAIEA, 2004) (available at http://www.saiea.com/calabash/handbook/index.html)
Guidebook for Evaluating Mining Project EIAs (ELAW, 2010) (available at http://www.elaw.org/mining-eia-guidebook)

b. Negotiating with External Actors

A negotiation is a discussion or dialogue that is aimed towards reaching an agreement. In the context of extractive industries and other in-

vestment projects, there are a number of different occasions whereby a negotiation may be necessary, for example:

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

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

Key Resources on Negotiating with External Actors
Negotiation and Mediation Techniques for Natural Resource Management (FAO, 2005) (available at http://www.fao.org/docrep/008/a0032e/a0032e00.HTM)

The ABC's of Negotiation: An Advocate's Guide to Negotiating with Providers to Improve Access to Health Care Services (Community Catalyst, Inc., 2004) (available at http://www.communitycatalyst.org/doc-store/publications/the_abcs_of_negotiation_feb04.pdf)

IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements (Gibson, O'Faircheallaigh, and the Gordon Foundation, 2010) (available at http://www.ibacommunitytoolkit.ca/index.html)

i. Free, Prior and Informed Consent

An important aspect of both dialogue and negotiation is the ability for parties to say "no" to an offer put on the table. Free, prior and informed consent (FPIC) is an ongoing process whereby at any stage of a negotiation, mediation or dialogue, a community has a right to seek more information, say "no", or withdraw entirely. It is recognised as a minimum standard in international law, and pursuant to the UN Declaration Article 32.2 applies specifically in the context of extractive industries: States shall obtain indigenous peoples' FPIC "particularly in connection with the development, utilization or exploitation of mineral, water or other resources." Each aspect of FPIC is briefly defined *(adapted from Guide to Free, Prior and Informed Consent, Oxfam 2010):*

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

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

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

Key Resources on Free, Prior, and Informed Consent
Guide to Free, Prior and Informed Consent (Oxfam, 2010) (available at https://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent_0.pdf)

Making Free, Prior and Informed Consent (FPIC) Work: Challenges and Prospects for Indigenous People (Forest Peoples Programme, 2007) (available at http://www.forestpeoples.org/topics/civil-political-rights/publication/2010/making-fpic-free-prior-and-informed-consent-work-chal)

Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development (RECOFTC and GIZ, 2011) (available at http://www.recoftc.org/project/grassroots-capacity-building-redd/training-manuals-and-guides/free-prior-and-informed-consent-redd-guidebook)

Guidelines for Implementing the Right of Indigenous peoples to Free, Prior and Informed Consent (IBIS, 2013) (http://ibissierraleone.org/publications/guidelines-free-prior-and-informed-consent/)
Turning Rights Into Reality (Cultural Survival and Rainforest Foundation US, 2013)

Making Free Prior & Informed Consent a Reality: Indigenous peoples and the Extractive Sector (Cathal Doyle and Jill Carino, 2013) (available at http://www.socialimpactassessment.com/documents/Consortium+FPIC+report+-+May+2103+-+web+version.pdf)

c. Advocacy Strategies

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

Potential uses of community protocols when engaging in advocacy

**ADVOCACY
STRATEGIES**

- Raising awareness

- Using as evidence

- Engaging with national and
international legal processes

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

Raising Awareness

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

Within communities
It is unlikely that all members of a community are able to actively contribute to developing their protocol, so raising awareness about it is important to build broad interest and support. To build on internal cohesion, it is essential to ensure that the community is largely united throughout the process of using the protocol.

There are a number of ways to raise awareness within your community about the protocol and the issues therein. Suggestions for specific uses within the community are highlighted in the table below. When discussing which to use, consider different age groups,

ethnicities, and interests. Different forms of communication could be tailored to each and to the community as a whole.

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

There are a number of tools that can be used to raise awareness about the community protocol amongst other communities such asexchange visits, peer learning experiences, community workshops, public forums, and meetings to discuss threats, issues and opportunities. Try to understand and respect any pre-existing relations, dynamics, or procedures that guide engagement between members or leaders of different communities. Furthermore, in specific cases the "community" for the purpose of the protocol may actually consist of more than one community if each is defined by certain criteria, such as livelihood. The purpose of the protocol is to build a common position on a certain matter or matters and to speak with one unified voice (for example, the various groups who are joining forces in a community protocol process in Lamu, Kenya in response to a deep water port and a coal plant; or the 33 communities on the same lithium reserve in Argentina who used the protocol process to outline their FPIC process).

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

Ways to Raise Awareness Within the Community

COMMUNICATION TOOL	WHAT CAN IT BE USED FOR?	QUESTIONS TO CONSIDER
Printed or hand-made materials posters, brochures, calendars, banners	• Put together a binder with key facts, information, and contact details about the community protocol process • Hold a design competition • Make a banner for use in community events	• Is there any sensitive or confidential information that should not be documented in written form? • What equipment do you need access to (blank paper, sheet or canvas, pencils, markers, rulers, paint, adhesive tape, computer, printer)?
Social media	• Start a Facebook page or Twitter account to share updates about the protocol process • Post videos and photo stories on YouTube • Start an online petition	• Are there any concerns about online privacy? • How could personal identities be protected?
Maps	• Host a workshop to introduce or update mapping of the community's area • Facilitate discussions between youth and elders about territorial boundaries and important resources • Highlight the impact that an activity will have on an ecosystem, livelihoods etc.	• Are there any boundaries, locations, or sites that are contested or confidential? • What equipment do you need access to (materials for sketch maps or 3-D models, satellite maps, GPS/GIS software, computer)?
Photography	• Organize a series of photography workshops and sharing sessions • Encourage teachers to incorporate photography into their lessons • Make a Photo Story or slideshow • Hold an exhibition in the community hall, school, or with local officials	• Are there any sensitive or confidential places or artefacts that should not be documented in photographs? • What equipment do you need access to (camera, batteries, film or memory card, computer or printing station)?
Video	• Document the process of developing and using the protocol with video cameras • Work with local youth to edit the film and add narration and music • Hold a community screening/ 'premiere'	• Do you have permission of the people in the film? Is there any sensitive or confidential information that shouldn't be in film? • What equipment do you need access to (cameras, batteries, computer, projector, screen or white sheet, electricity)?
Theatre or role plays	• Develop a role play or skit with the main people involved in the process of developing and using the protocol and perform it for the community	• Where would you practice and hold a theatre performance or role play (community hall, school, sports field, under a tree)? • How would you involve community members who are outgoing?
Radio or audio recordings	• Interview the main people who have been involved in the process of developing and using the protocol, as well as key community members • Edit the interviews into a 'programme' that can be broadcast on radio	• Who has an interesting story to tell? • How would you encourage the person to share the story in an engaging way? Consider developing some guiding questions to ask • How would you represent different perspectives (men, women, youth, elders)?

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

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

There are a number of ways and forms with which to raise awareness amongst the general public. A community could use some of the participatory methodologies used during the community protocol process to convey key issues and challenges, for example, by hosting an event that features participatory theatre, role plays, and local photography of key issues. The most common methods of raising awareness on key issues and challenges are through engaging with mainstream media tools such as press releases, press conferences, interviews, and gaining coverage in local and national newspapers, radio, and television. This can be challenging but can boost public awareness about the community's issues.

Resources
Media Coverage (KnowHowNonProfit) (available at https://knowhownonprofit.org/campaigns/communications/media-coverage)
How to Organize Media Events (About.com) (available at http://marketing.about.com/od/publicrelation1/a/organizemedievents.htm)

REVATI PANDYA

How to Write a Killer Press Release (Friends of the Earth, 2007)
(available at https://www.foe.co.uk/sites/default/files/downloads/cyw_64_
press_release.pdf)

How to Write the Perfect Press Release for Journalists (journalism.
co.uk) (available at https://www.journalism.co.uk/skills/how-to-write-the-
perfect-press-release-for-journalists/s7/a535287/)

Using as Evidence

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

- The thorough engagement and completion of a Community Health Impact Assessment Tool not only enables the community to internally reflect on many different short-, medium- and long-term impacts a project or activity, but also provides evidence of these reflections that could form part of a response to an impact assessment, or counter an investor's claims that a project or activity will not have particular impacts.

- Mapping of a community's agreed governance structures and decision-making processes can provide evidence as to whether or not a community did engage in "participation", "consultation" or a process of free, prior and informed consent. If such engagements did not follow the community's protocol, it can be argued that meaningful community engagement did not occur.

- Mapping of a community's use of land and natural resources and documentation of the multiple values of particular environmental features (such as a water source, pastures for grazing, sacred sites, and so on) can provide evidence to dispel claims that land is "vacant" and therefore able to be used for an extractive or infrastructure project.

Advocating on a National, Regional and International Level

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

National Laws and Policies

Laws and policies that impact and are otherwise relevant to indigenous peoples and local communities, are developed through a range of governmental decision-making processes such as councils or multi-stakeholder committees. They are implemented by specific government agencies, often through a number of subsidiary bodies at the sub-national and local levels. Understanding and engaging with the relevant frameworks in your country is a very important part of effectively using a community protocol. *Booklet 5* discusses this in much greater detail.

International Laws and Policies

There are a variety of international processes that affect indigenous peoples, local communities, and their territories and areas (see the table at the end of this sub-section).

Whilst international processes can initially seem slow and far removed from the daily realities of community life, they can influence countries' laws and policies, which in turn directly impact communities at the local level. Engaging in international processes should be seen as a long-term investment that can yield potentially significant gains, particularly when these gains are actively used at the national and sub-national levels.

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

FORUM	KEY PROCESSES, MEETINGS AND MONITORING MECHANISMS
UN Permanent Forum on Indigenous Issues	Session (annual)
Expert Mechanism on the Rights of Indigenous peoples	Meeting (annual)
Special Rapporteur on the Rights of Indigenous peoples	Individual communications Special reports Country reports
UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises	Forum (annual) Country visits
Special Rapporteur on the Situation of Human Rights Defenders	Individual complaints State report Country visits
Human Rights Committee	State reports Inter-state complaints Individual complaints
Committee on Economic, Social and Cultural Rights	State reports Individual complaints
Committee on the Elimination of all forms of Racial	State reports Early-warning procedures Inter-state complaints Individual complaints
Committee on the Elimination of Discrimination Against Women	State report

d. Preventing and Resolving Conflict

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

Conflict with External Actors
Depending on the situation, many avenues can exist for addressing conflicts with external actors. These avenues exist in a range from informal dialogue to formal court proceedings. Each approach can have advantages and drawbacks, and it will be up to each community to decide on the approach they want to take.

Key Resources on Conflict Prevention
Alternative Dispute Resolution Practitioners' Guide (Centre for Democracy and Governance, 1998) (available at https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf).

Conflict Management in Community-based Natural Resource Projects: Experiences from Fiji and Papua New Guinea (Overseas Development Institute, 2000) (available at http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2738.pdf).

Training Manual on Alternative Dispute Resolution and Restorative Justice (UN Office on Drugs and Crime, 2007) (available at https://www.unodc.org/documents/nigeria//publications/Otherpublications/Training_manual_on_alternative_dispute_resolution_and_restorative_justice.pdf)

6. COMMUNITY PROTOCOLS:
TWO EXAMPLES IN PRACTICE

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

Two examples of community protocols are described in more detail below:

- To engage within the community and with government agencies in Northern Ghana around a gold mine; and

- To guide planning for projects and dialogue with mining companies in Choco, Colombia.

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

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

The Tingandem and broader Tanchara community have been developing a community protocol to assert their rights under customary,

national and international law. The Tanchara community has been using a number of endogenous development tools to strengthen local capacities and customary institutions and governance systems. They have also developed their own tool, the innovative Community Health Impact Assessment Tool, to conduct their own impact assessment and focus on community-determined values and priorities such as education, health, and other spiritual, social-cultural, and material aspects of their ways of life. Thus far, the process of developing a community protocol has been effective in engaging with government authorities on the impacts of mining in the area.[3]

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

Case Study:
Mining in the forests of Choco, COLOMBIA

In Choco, a region of Colombia, representatives of 30 Afro-Colombian communities developed a community protocol in response to mining of minerals, in particular gold, and the extraction of other resources in the community forests. In conjunction with a national policy making extraction of resources a central pillar of the countries development, communities witnessed a dramatic increase in mining, both legal and illegal, which negatively impacted forest resources, water pollution, cultural values and caused significant rifts within the local groups.

As a result, the community leadership association known as the Alto San Juan Community Council (ASOCASAN) developed a community protocol to provide guidance on activities taking place within their territories. The protocol was approved by the general assembly, which consisted of representatives of each of the 30 communities. The community protocol highlights, through numerous examples, the important role the environment plays in the cultural and material aspects of the communities' life. This includes the practice of traditional mining, which encourages collective work and recovery of the environment. The protocol has been used to set guidelines for appropriate means of dialogue with external actors and the considerations that must, by right of law, be taken into account in municipal planning processes, national policies, and administrative decisions, with the aim of including community representatives in all decisions that impact them.[4]

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4 For more information, see "Defending our territory: the biocultural community protocol of Alto San Juan, Colombia" (Piedrahita, T. and Mosquera, C.) in Biodiversity and Culture: Exploring community protocols, rights and consent, IIED Participatory Learning and Action 65, co-edited by IIED, Kalpavriksh, Natural Justice, COMPAS, and UEBT, 2012. See http://pubs.iied.org/14618IIED.html.

4

COMMUNITY PROTOCOLS AND EXTRACTIVE INDUSTRIES

Community
Protocols
Toolbox

● ● ● 4 ●

Booklet 4

COMMUNITY PROTOCOLS AND EXTRACTIVE INDUSTRIES

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

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

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

1. Conceptualising the community for the purpose of the protocol without generating further frictions among communities or community members;

2. Managing and reacting to externally imposed timeframes while keeping the protocol process community-driven;

3. Facilitating the development of a community protocol in a format that makes it a viable tool for external interactions while not imposing a particular format upon the communities;

4. Keeping abreast of project developments, often occurring quickly, and time-frames within which the law allows response;

5. Managing the expectations of community members; and

6. Managing sensitive information.

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

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

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

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

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

1. CONCEPTUALISING THE COMMUNITY

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

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

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

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

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

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

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

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

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

Inclusiveness

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

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

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

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

2. MANAGING TIMEFRAMES

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

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

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

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

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

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

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

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

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

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

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

3. IDENTIFYING AND ADDRESSING THE STAKEHOLDER

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

Defensive and aspirational aspects of the community protocol

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

ASPIRATIONAL at project development stage:
// Requesting respect for community development plan
// Requesting equitable sharing of costs and benefits
// Requesting regular information exchange

DEFENSIVE during operation:
\\ Denouncement of fundamental rights violations
\\ Denouncement of expropriation or displacement
\\ Denouncement of environmental impacts

ASPIRATIONAL during operation:
// Calling for greater or more effective participation
// Requesting support for local livelihood development

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

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

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

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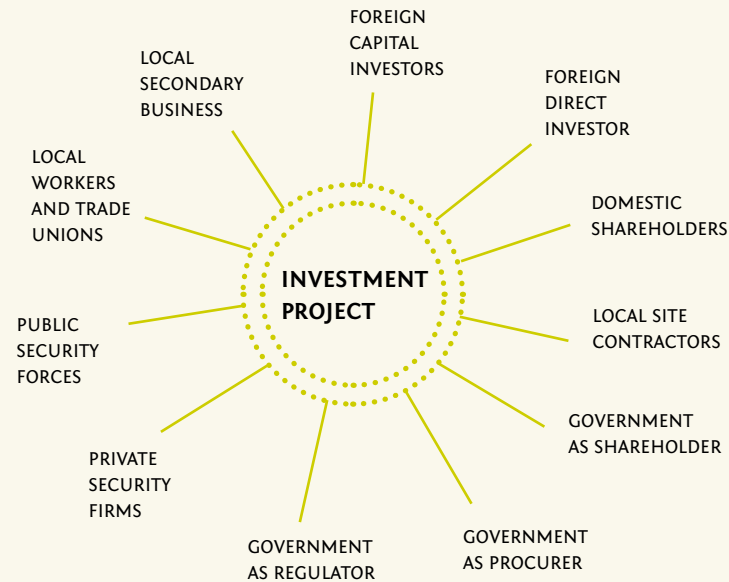
All of the stakeholders in the diagram above are potentially relevant to an extractives project. The mining industry has its own specific list of interested players as described below:

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

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

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

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

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

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

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

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

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

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

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

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

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

4. MANAGING EXPECTATIONS

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

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

5. MANAGING SENSITIVE INFORMATION

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

KEY CONSIDERATIONS REGARDING SENSITIVE INFORMATION.

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

to contemporary challenges? For example, maps could have 'fuzzy' boundaries and exclude certain names or exact locations, visitors could be restricted to public areas, and shared information could be on a 'need to know' basis only.
- What will the community do if sensitive/confidential information is accessed by outsiders without the consent of the community?

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

5

LEGAL ELEMENTS OF THE COMMUNITY PROTOCOL

Community
Protocols
Toolbox

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Booklet 5

LEGAL ELEMENTS OF THE COMMUNITY PROTOCOL

1. CHALLENGES AND OPPORTUNITIES

One important focus of community protocols is on understanding laws and policies, asserting rights and responsibilities, and clearly defining what the community requires for external actors to appropriately engage with them. The legal empowerment process behind it requires time and energy, but it is an important element of developing a community protocol.

In the context of extractive industries, land rights are particularly important, and communities face several challenges in this respect. First, many countries do not recognize or respect indigenous peoples' and local communities' customary laws and traditional authorities, institutions and decision-making processes. This can undermine ancestral systems of caring for territories and natural resources that can ultimately impact culture and the protection of biodiversity.

Second, there is inadequate recognition of customary land rights. Although there have been a range of land tenure reforms worldwide to address historical injustices, many of these programmes have not placed sufficient emphasis on customary systems of tenure, steward-ship or trusteeship. Additionally, women often lack formal rights to land tenure. Common property resources such as forests and range-lands remain particularly vulnerable, because states often consider them unoccupied or unregistered and thus available for allocation to individuals or corporations. This situation is a fundamental source of insecurity and actual or potential dispossession for up to half a billion people across Africa. Similar situations exist in many formerly colonized countries, such as those in South Asia. Insecure land rights often mean that indigenous peoples and local communities are un-able to legally enforce their customary ownership, rules and control, particularly when the government issues exploitative concessions and other permits in their territories.

Third, very few countries provide communities with rights to sub-soil resources. Indeed, even in countries that have passed legisla-

tion that recognizes community land rights, this legislation is often undermined by laws regulating access to natural resources, including sub-soil resources. This is particularly evident in the context of laws relating to mining that reserve ownership rights over minerals for the state irrespective of other laws providing land ownership rights to communities.

At the same time, there is evidence of positive legislative developments at both the international and national levels. The last two decades have seen a proliferation of provisions in international instruments that support indigenous peoples' and local communities' rights over their territories, areas and resources. These provisions are not limited to human rights instruments, but can be found across the full spectrum of international law and policy. There are also many examples of judgments from regional and national courts that support communities' rights, including a growing body of jurisprudence on Aboriginal title. Indigenous peoples and local communities are not merely stakeholders, but are rights-holders who must be respected and recognized as the stewards of their territories, areas and natural resources.

2. INFORMATION TO INCLUDE IN THE PROTOCOL

With this background in mind, community protocols can serve as a way to highlight the rights that communities have, and to link those rights to the community's cultural practices and future goals. The community may may wish to include the following main types of information, among others in the community protocol: customary laws, rights, and responsibilities and the norms and values that underpin them; specific national and international laws and policies; assertions of overlaps or conflicts between legal systems; community-defined terms and conditions for engagement of external actors; messages directed toward specific external actors to either cease harmful activities or engage in constructive ones; and visions and plans for the future.

NOTE: *For facilitators, conducting an in-depth review of laws and policies relevant to the community can be an important part of the protocol process. For comprehensive guidance and information on this see Annex 6 of the* Framework Methodology on Community Protocols in the Context of Extractive Industries*, available at* http:// naturaljustice.org/wp-content/uploads/2015/09/Framework-methodology.pdf. *The information gathered as part of the legal review set forth in Annex 6 will help provide a baseline of information that can be used to devise advocacy strategies, educate the community on its rights, and help to deepen the protocol process.*

a. Customary Laws

Community protocols provide an opportunity for communities to inform external parties of the customary laws that apply to the community as well as to those outside of the community. It is up to the community to decide how much detail to provide, but some categories of information to consider including are:

- What are the customary laws that relate to the community's territory or area? How are the boundaries defined? This may include rules or regulations for the use of resources, sharing of traditional knowledge, and timing of important social-cultural events.
- How do these laws regulate different aspects of the community's ways of life (for example, social, cultural, spiritual, environmental, economic, and political)?

- What are their underlying values and norms? How are these values and norms reinforced and passed on to other authorities or younger generations?
- What are the community's customary rights and responsibilities related to local crops, plants, livestock breeds, and wildlife over the areas and habitats in which they are found, cultivated, bred, kept, or grazed?
- Are there any taboos or restricted areas from which no resources should be taken (during certain times or permanently)?
- How is the community organized or what is its governance structure? Who should external parties speak to if they want to engage in activities that will impact the communities' territory or culture? How should that interaction take place?
- What information would the community like to know before making any decisions? Consider listing key questions that they should answer up front.
- Once this information is presented, how would the community respond to different requests or proposals?
- What would the community do if their customs were not properly adhered to? Are there any conflict resolution processes that the community would like to highlight?

NOTE: *National Laws*
National laws are a critical component of the protocol and will be relevant to several specific issues such as land, water and mineral rights. National laws and how to find them are discussed in more detail below in Section 2.c *Other Categories of Rights*.

b. International Laws and Policies that Support Communities

In the regional and international context, the concept of "law" is often interpreted differently from the national context. It is beyond the scope of this Booklet to touch on the complex debate surrounding the legal status of instruments agreed to between two or more states. Nevertheless, there are numerous regional and international treaties, resolutions, policies and guidelines that provide progressive and substantive support for the rights of communities and thus can either reinforce rights set forth at the national level or fill in gaps where national legislation does not exist.

Two important instruments in this regard need to be singled out.

The first is the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), adopted in 2007. This contains provisions affirming indigenous peoples' right to self-determination, to practice their cultures, and to own and control their traditional lands, territories, and resources. The second is *International Labour Convention* (ILO) *No. 169* (entry into force in 1991), a binding legal treaty that addresses similar categories of rights to the UN Declaration. Both of these are important international instruments to consider when developing community protocols, including in the context of extractive industries.

In addition to the UN Declaration and ILO 169, several other instruments are also relevant to communities in the context of extractive industries. These include instruments addressing human rights and guidelines and policies relevant to business and finance.

i. Human Rights
At regional and international levels, many instruments enumerate human rights in a variety of different contexts, such as civil and political rights, the rights of children, and the rights of women. These human rights instruments are broadly applicable to the kinds of challenges that communities face when impacted by extractive activities. Some of the most prominent instruments are listed below, although it is important to note that this list is intended to serve as a starting point only.

Regional Instruments
- The African Charter on Human and Peoples' Rights
- The African Charter on the Rights and Welfare of the Child
- The American Convention on Human Rights, 1969, and its Protocols of 1988 and 1990
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- The European Convention on Human Rights
- The Framework Convention for the Protection of National Minorities

NOTE: *More Regional Resources*
There are other regional instruments, including those not directly related to human rights, that may be of importance depending on the context of the protocol. For more information on regional human rights treaties, see The Major Regional Human Rights Instruments, available at http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf.

International Instruments
There are ten core international human rights treaties, and more information on those treaties is available on the website of the UN Office of the High Commissioner of Human Rights (http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx). Although all those treaties are significant in their own way, there are three instruments of particular importance that together form what is commonly referred to as the International Bill of Human Rights. These instruments greatly influenced the human rights instruments that were subsequently adopted at the regional and international level:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights

ii. Guidelines and Policies Relevant to Business and Finance
In addition to the proliferation of internationally agreed instruments supporting community rights, more and more businesses, banks and international institutions have adopted guidelines and policies designed to reduce impacts on the environment and human rights. Because large-scale extractive activities by definition generally involve corporations and financial institutions, those guidelines and policies are also very relevant for communities to consider when developing community protocols. These include:

a. Guidance/Policies for Businesses
The UN Guiding Principles on Business and Human Rights (Guiding Principles): The Guiding Principles were endorsed by the UN Human Rights Council in 2011 and have seen broad acceptance by corporations, international institutions, and many within civil society. The Guiding Principles are a voluntary set of guidelines based on three pillars: the state's duty to protect human rights, the corporate responsibility to respect human rights, and need for remedy if those rights are violated. For more information, visit http://business-humanrights.org/en/un-guiding-principles.

The Organization for Economic Co-operation and Development (OECD): The OECD is an international economic organisation of 34 countries, the majority of which are developed and located in North America and Europe. The OECD has issued Guidelines for Multinational Enterprises that contain provisions on human rights. The OECD also requires member countries to establish a dispute resolution process known as National Contact Points to address allegations of non-compliance with the Guidelines. For more information visit http://www.oecdwatch.org/oecd-guidelines.

Guidance from the International Council on Mining and Metals (ICMM): The ICMM is a membership organization of mining companies that commit to adhering to certain guidelines and reporting requirements. These guidelines include the *Indigenous Peoples and Mining Position Statement* which addresses the ICMM's position on free prior and informed consent. For more information visit https://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining.

b. Guidance/Policies for Finance
Businesses are just one part of the extractives value chain. Another part consists of financial institutions that lend capital to the business enterprises engaged in extractive activities. These institutions can play a major role in whether and how extractive activities are undertaken.

Development Finance Institutions (DFIs): All of the major DFIs – such as the World Bank, the International Finance Corporation, and the African Development Bank – that often provide financing for large-scale extractive projects have policies in place governing both the DFI as well as the DFI's clients. These include the Performance Standards of the International Finance Corporation (IFC), which has policies on indigenous peoples and free, prior and informed consent as well as the Environmental and Social Safeguards of the World Bank. Regional DFIs such as the African Development Bank also have similar policies in place. These policies are mandatory for the DFI and client to follow, and all of the major DFIs have grievance mechanisms in place to deal with allegations that their policies have been violated. For more information visit: http://grievancemechanisms.org/grievance-mechanisms.

Private Financial Institutions: Private financial institutions also play a role in financing extractive activities. Many of these institutions have signed on to a voluntary code called the Equator Principles, which are set of standards for identifying and managing social and environmental risk in project financing. They are based largely on the IFC's Performance Standards and reference the Guiding Principles as well.

For more information, visit: http://www.equator-principles.com/index.php/about-ep/about-ep

These guidelines and policies are some of the major efforts directed specifically at business and finance institutions. How they are utilized will be very context-specific and depend upon the strategy that communities wish to implement. The International Federation for Human Rights (FIDH) has published an in-depth guide on a broad array of tools, including those discussed in this Booklet, to combat corporate harms. Their resource, entitled *Corporate Accountability for Human Rights Abuses*, is available at https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/Updated-version-Corporate-8258.

c. Other Categories of Rights at the National and International Level

This section addresses both national and international laws and policies that support the rights of communities and that may be relevant in the context of developing a community protocol. It sets forth some of the major interconnected categories of laws applicable to community protocols in the extractives context. These categories are provided as a general guide to help approach the legal review process, but it is important not to overly compartmentalize laws and policies that may be relevant to the issues and priorities of the community. There are at least as many ways of organizing legal frameworks as there are countries in the world, and laws supporting communities can certainly be found in more categories than those listed here.

The categories set forth below are not distinct from human rights, and indeed several human rights instruments are cited in support. Instead, these categories attempt to provide some direction in understanding which instruments may be the most useful in a given situation. At the national level, laws can be found in many different sources, such as in the national constitution, national and provincial legislation, local government regulations, agency or ministry policies and judgments issued by courts. Most countries provide access to their laws online through their official websites, although the level of organization and website upkeep will vary widely. Other resources for finding national laws are available as well, and where relevant to a particular category they are noted below.

Regional sources are not addressed in this section because those instruments will generally only be relevant to protocols being developed in the corresponding region. The FIDH guide on Corporate

Accountability for Human Rights Abuses provides a detailed breakdown of regional instruments and grievance mechanisms. The guide is available at https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/Updated-version-Corporate-8258.

At the international level, most instruments can be found online through general Internet searches. For more information on language in international instruments that is relevant to the categories set forth below, please refer to the Living Convention, which is a compendium of internationally recognized rights that support indigenous people and local communities. The Living Convention organizes provisions in international instruments by category and reproduces them verbatim so that users can determine at a glance what the relevant international law or policy is on a particular topic. It is available at: http://naturaljustice.org/resources-and-research/the-living-convention/.

LAND
Extraction of natural resources often takes place on lands traditionally occupied or used by communities. Most countries will have national laws that regulate ownership of or access to land. Additionally, land laws can be organized under a variety of issues and topics that might not at first glance appear related to "land." For example, in the section of the South African Constitution dealing with human rights, there is a provision entitled "property," which among other things calls on the state to take measures to enable citizens to gain access to land on an equitable basis[1]. Many countries also have or are in the process of drafting laws that regulate land occupied by communities. For example, the Kenyan parliament is currently (as of January 2016) debating a bill on community land which will become part of Kenya's national legislation once it is passed. For more information see the Kenya Community Land Bill 2015 at http://www.isk.or.ke/userfiles/Community%20LandBill%202015.pdf.

National
One resource for finding out more about national laws and policies related to land is the Food and Agriculture Organization's (FAO) Gender and Land Rights Database (available at http://www.fao.org/gender-

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1 *Constitution of the Republic of South Africa, 1996 - Chapter 2: Bill of Rights §25(3): "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."*

landrights-database/country-profiles/en/). This database has profiles of over 84 countries and provides several categories of information, including information on land tenure and related institutions. The United States Agency for International Development (USAID) also maintains a web portal with information on land tenure and property rights of many countries (available at http://www.usaidlandtenure. net/country-profiles).

International

- UN Declaration
- ILO 169
- FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines)
- Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities

WATER

Extractive activities can impact water sources that communities rely on for their livelihoods. These impacts can take a variety of forms, including polluting or reducing access to water resources. Often, countries have laws governing water access and use that can be relevant in the extractives context.

National

The FAO and the World Health Organization have jointly developed a database of national legal frameworks governing water resources in selected countries (available at http://www.waterlawandstandards.org). Some of the topics covered in the database include whether there is a basic water law in the country; who owns water; who is authorized to use water and how; and the nature of the government's administrative structure for water resources management.

International

- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on Wetlands of International Importance (Ramsar Convention)

- Convention on the Rights of the Child
- FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security

CULTURAL HERITAGE

The cultural heritage of communities is impacted in a variety of ways by extractive activities, including through displacement and the influx of new cultures when people from outside the community come to work. Many countries do have laws in place to protect cultural heritage. For example, Slovenia has a law that makes cultural heritage surveys an obligatory element of plans for infrastructure development (Slovenia Cultural Heritage Protection Act (1999), available at http://www.unesco.org/culture/natlaws/media/pdf/slovenia/slov_order_ promulgation_culturalheritage_protection_act_engtof.pdf).

National

One source for finding national cultural heritage laws is the database maintained by the UN Educational, Scientific and Cultural Organization (UNESCO) (available at http://portal.unesco.org/culture/en/ev.php-URL_ID=33928&URL_DO=DO_TOPIC&URL_SECTION=201.html). This database allows users to search by a variety of criteria, including country, theme, language and date.

International

- International Covenant on Civil and Political Rights
- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
- Declaration on the Rights of Minorities

MINING LAWS

In the context of extractives, it is important to also determine whether there are national laws or policies that govern mining and sub-surface rights. Generally, countries reserve sub-surface ownership rights regardless of any other land rights that they recognize. Even where countries have provided for community ownership of minerals in national legal frameworks, these rights have often not materialized. For example, in the Philippines, the *Indigenous Peoples Rights Act* provides for communities' rights of ownership to natural resources, including mineral rights. However, the *Mining Act* reserves ownership of mineral resources for the state, and it is the *Mining Act* that often prevails[2].

National

Many countries have laws and policies that specifically address mining. One resource for finding mining laws is the FAO's Legal Office, which maintains a database of national laws on several different topics, including the ones addressed in this Booklet (available at http://faolex.fao.org/faolex/index.htm). In Africa, there is the Africa Mining Legislation Atlas, which uses a map-based interface to provide information on most African countries (available at http://www.a-mla.org). Additionally, internet searches for specific countries should help identify the text of mining and mineral legislation if it is available.

International

Although there is not yet an overarching international law of mining, most of the international instruments referenced here are relevant to mining in one way or another, whether it is in regard to land, impacts on culture, or other category. Some relevant instruments include:

- Convention on Biological Diversity
- Convention on the Law of the Sea

ACCESS AND BENEFIT SHARING

Access to and extraction of natural resources raises raises difficult questions about who should benefit from those activities, what form the benefits should take, and how benefits are distributed. Although

some countries – such as Chile, Papua New Guinea, and South Africa – do have mining regulations that include requirements for benefit sharing or other initiatives designed to help communities grow, these requirements are still relatively rare.

National

One of the first places to look would be in the country's mining laws and associated policies. In 2001, the World Bank published a resource called Sharing Mining Benefits in Developing Countries that notes the benefit-sharing policies of several countries and provides examples of how agreements were reached in practice (available at http://www.sdsg.org/wp-content/uploads/2011/06/WB-Sharing-Mining-Benefits-in-Developing-Countries.pdf).

International

- *Convention on Biological Diversity*
- *Nagoya Protocol on Access and Benefit Sharing*
- *Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities*
- *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*

ACCESS TO INFORMATION

In order to respond to challenges posed by extractive activities, communities must have proper information. This includes information related to disclosure of contracts between governments and extractive companies, making rules and regulations for natural resource licenses and concessions available in a public database, and publishing timely reports on oil, gas and mining operations. For more information, see the Open Government Guide, available at http://www.opengovguide.com/topics/extractive-industry/.

National

Many countries have laws governing disclosure of and access to information. One resource for finding national access to information laws is the Right to Information Rating, which provides the text of access to information laws of over 100 countries (available at http://www.rti-rating.org/country-data).

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2 *See Report No. 16, The Philippines (2012), analyzing national legislation in the context of ICCAs, available at http://naturaljustice.org/wp-content/uploads/2015/09/Asia-Regional-Philippines.pdf.*

- Convention on Access to Information, Public Participation In Decision-Making, and Access to Justice In Environmental Matters (Aarhus Convention)

IMPACT ASSESSMENTS

Impact assessments on issues such as the environment and culture can help identify and address the effects that extractive activities inevitably have. Many countries have legislation setting forth requirements for impact assessments, including circumstances under which they must be prepared and what they must address.

National

The FAO, the International Union for the Conservation of Nature (IUCN) and the UN Environment Programme (UNEP) jointly maintain a database of environmental law called ECOLEX (available at http://www.ecolex.org/ecolex/ledge/view/SimpleSearch;DIDPFDSIjsessionid=DA D2340C9C5DB6A3F42712AA27CB10FB). Using the advanced search feature of the database allows users to search by keyword and country, which can return results for laws on impact assessments.

International

- Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment Regarding Developments Proposed to Take Place on, or Which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities

3. CONCLUSION

The above categories are just some of types of laws that are relevant to communities impacted by extractive industries. Legal mapping is very context-dependent, and the same law in the same country may be relevant to different communities in different ways. Therefore, it is very important for facilitators to work with community members to identify the major issues that they are facing and their purposes for developing a community protocol. Based on these discussions, relevant laws can be selected that can support the community's call for protection and respect of its rights.

JAEL MAKAGON

6

USEFUL
RESOURCES
AND FURTHER
READING

Community
Protocols
Toolbox

USEFUL RESOURCES AND FURTHER READING

This Booklet sets forth several additional resources under different categories that may be relevant to communities in the context of extractive industries. Links to these resources are provided should communities and facilitators desire more information about relevant issues, whether it is specifically for purposes of developing a community protocol or for further learning.

The first three categories are focused on information communities can use to respond to or interact with extractive activities while the next three categories provide background information on the global system of trade and investment that supports extractive industries.

1. Guidance on Grievance and Corporate Accountability Mechanisms

These resources are helpful for understanding options at the regional and international level for obtaining redress, such as the grievance mechanisms of development finance institutions (e.g. the Inspection Panel of the World Bank).

International Federation for Human Rights (FIDH):
Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms, 2012 at:
https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/Updated-version-Corporate-8258
Provides a practical tool for victims and their representatives, NGOs and other civil society groups (unions, peasant associations, social movements, activists) to seek justice and obtain reparation for victims of human rights abuses involving multinational corporations.

Accountability Counsel:
Accountability Resource Guide, 2015 at:
http://www.accountabilitycounsel.org/resources/arg/
The Accountability Resource Guide addresses tools for redressing human rights and environmental violations by international financial institutions, export promotion agencies and private corporate actors.

Centre for Research on Multinational Corporations (SOMO):
Specific information on human rights and grievance mechanisms at:
http://grievancemechanisms.org/resources
This website is for individuals, workers, communities and civil society organisations who need information and tools to file complaints against a company, business or multinational corporation to address corporate human rights abuses, seek justice and/or obtain reparation.
Economic, Social and Cultural Rights Network (ESCR-Net):
Database on case law from different countries on corporate accountability, among other issues, at: https://www.escr-net.org/caselaw
This database includes case law from different countries on the issue of economic, social and cultural rights, including corporate accountability. The database includes domestic, regional and international case law.

2. Human Rights and Rule of Law Assessments

These resources are helpful for gaining a general overview of the human rights and rule of law situation in many different countries. This information can be useful to develop strategies for addressing challenges posed by extractive industries.

Amnesty International:
Human Rights by Country at: https://www.amnesty.org/en/countries/
Individual country assessments by amnesty international and a constantly updated list of news reports on human rights violations in individual countries.

Human Rights Watch:
World Reports, country chapters, at:
http://www.hrw.org/world-report/2013/essays/without-rules
Detailed analysis of human rights situations in countries around the world.

International Bar Association:
Rule of Law report series, by country, at: http://www.ibanet.org/Human_Rights_Institute/HRI_Publications/Other_HRI_Publications.aspx
Country reports on the rule of law in individual countries, often responding to emerging crises.

World Justice Project:
Rule of Law Index of different countries, at:
http://worldjusticeproject.org/rule-of-law-index
The index provides data on the experience of rule of law in different countries across the world based on 8 different factors, including absence of corruption, fundamental rights and civil and criminal justice.

United Nations Human Rights Office of the High Commissioner:
Rule of Law Indicators prepared by the UN, 2011 at:
http://www.un.org/en/peacekeeping/publications/un_rule_of_law_indicators.pdf

3. Community Development Agreements

Communities may take a decision to negotiate with companies and governments in regard to extractive activities. If that decision is made, these resources can provide guidance on negotiation strategies and what to expect.

Fair Mining Collaborative:
Negotiating Agreements, at: http://www.fairmining.ca/guide/negotiating-agreements/agreements-between-first-nations-and-mining-companies/
An online guide for Canadian First Nations on negotiating mining agreements. It provides information on different kinds of agreements, including Access / Exploration Agreements and Impact Benefit Agreements. Also provides guidance on other information such as mineral tenure, mineral prospecting, and environmental impact assessments.

IBA Community Toolkit:
Negotiation and Implementation of Impact and Benefit Agreements, 2015, at: http://gordonfoundation.ca/publication/669
A detailed toolkit for communities on negotiation community development agreements in the mining sector. It focuses on an extractive industry lifecycle analysis and a comprehensive legal assessment of Canada's relevant legislation While most of it will not be applicable to other countries, it is useful as it provides for a good structure for

initial legal reviews and for potential reactions to participation information or consultation rights.

World Bank:
Community Development Agreements Source Book, 2012, at:
http://www.eisourcebook.org/cms/Mining%20Community%20Development%20Agreements%20Source%20Book.pdf
Geared toward investors and governments, provides guidance on negotiating community development agreements in the context of extractive industries. Useful for communities as well because it provides interesting insights on common practices for interacting with communities, including on 'classifications' of 'qualified communities' and on consultation approaches. Details individual steps throughout the life cycle of an investment.

EI Resources Book:
Extractive Industries Resources Book, at: http://www.eisourcebook.org/
Although this resource is geared toward policy makers and their advisers in resource-rich developing countries, it contains useful information for communities as well. It outlines a number of policy considerations for developing extractive industries, ordered along six levels: sector policy and law, contract and regulation; sector organisation and administration; fiscal design; revenue management; transparency and accountability; and sustainability in the sense of environmental and social management and the linkages of these activities to broader impacts across the economy.

4. Resources Focused on Extractive Industries

There are numerous resources available providing a broad variety of information about extractive industries. The resources below include guidance for communities on engaging with extractive industries, as well as understanding the extractives sector in specific countries and on a global level.

Library of Community Toolkits:
Collection of guides for mining-affected communities, at:
http://communitiesfirst.net/toolkits/
The Library of Community Toolkits has links to several community-focused guides on issues such as learning about the mining process,

mobilizing and seeking community cohesion, learning about rights, dialogue and negotiation, among others.

Business & Human Rights Resource Centre:
Extractives resources, at http://business-humanrights.org/en/node/86750
This section of the Business & Human Rights Resource Centre's website provides links to several types of relevant resources, including guidance by governments, NGOs, and companies, as well as links to toolkits by industry and multi-stakeholder associations.

EITI: Extractive Industries Transparency Initiative, at:
https://eiti.org/eiti
The EITI promotes open and accountable management of natural resources. Countries implementing the EITI disclose information on tax payments, licences, contracts, production and other key elements around resource extraction. This information is disclosed in an annual EITI Report which allows citizens to see for themselves how their country's natural resources are being managed and how much revenue they are generating.

Chatham House:
Resources Future, 2012 at:
 http://www.resourcesfutures.org/#!/introduction
Resources Future is both an interactive web-based tool and a comprehensive report. It assesses the contemporary political economy of the world's integrated resources market. It analyses trends in the production, trade and consumption of key raw materials and predicts future resources insecurities and areas of conflict and contention.

World Economic Forum:
Mining and Metals section, at:
http://www.weforum.org/communities/industry-partner-mm
Provides information on industry projects, as well as research, including Mining Scenarios 2030, 2010 at:
http://www3.weforum.org/docs/WEF_Scenario_MM2030_2010.pdf
The WEF's sector scenarios are developed for industry actors to explore the future of the targeted sectors, and the different factors that influence market behaviour. They are meant to provide tools to improve strategic decision-making, contributing to the sustainability of the global mining and metals sector.

Land Matrix:
Database on land acquisition, available at:
http://www.landmatrix.org/en/
This interactive website serves as a database for collecting and visualizing detailed information about large scale land acquisition, including for industrial purposes. Details are provided by purpose of investment, target countries and other categories.

5. Trade Statistics and Policy Information

Because fuels and mineral are heavily traded commodities, information about trade can be very relevant to extractive industries issues. These resources provide information on trade statistics and policies that can help give communities a picture of a country's trade activities.

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

WTO: *Country Trade Policy Reviews* (TPRs) by country, at:
http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm
TPRs are periodically conducted and consist of an analysis of a country's trade policies conducted by the WTO Secretariat, and a matching report from the country. The reports identify the main actors in a country, main policy approaches, recent policy reforms and trade priorities.

OECD: *Publications on trade statistics*, at:
http://www.oecd-ilibrary.org/trade
Books, policy papers and statistics on trade A gateway to statistics, policy reviews, global reviews and country, sector and case studies. Outlines all relevant export restrictions on raw materials and the policy reasoning for their adoption. Provides some interesting reviews of mining sector developments and the impact of strategic policies.

IFC: *The World Bank Group in Extractive Industries*, by year, at:
http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Oil,+Gas+and+Mining/Development_Impact/Development_Impact_Extractive_Industries_Review/
These reports detail the World Bank's activities in extractive industries The annexes that outline country level projects financed by the World Bank, including project specific 'development forecasts' are most relevant as they can detail the status of a project or future aspirations.

World Bank: *Private Participation in Infrastructure Database*, at:
http://ppi.worldbank.org/customquery
The PPI database identifies and disseminates information on private participation in infrastructure projects in low- and middle-income countries. The database highlights the contractual arrangements used to attract private investment, the sources and destination of investment flows, and information on the main investors. Searches can be made by sector, country, type of project, or combination of all three.

6. Foreign Direct Investment Trends and Policy

Foreign direct investment (FDI) is investment from one country into another (normally by companies rather than governments) that involves establishing operations or acquiring tangible assets, including stakes in other businesses. FDI can be an important source of capital for supporting extractive activities.

UNCTAD: *World Investment Reports*, by year, at: http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/WIR-Series.aspx
The most comprehensive reports on foreign direct investment flows and related policies. See in particular the report from 2007 (Transnational Corporations, Extractive Industries and Development, 2008 (Transnational Corporations and the Infrastructure Challenge, and 2012 (Towards a New generation of Investment Polices).

UNCTAD: *Investment Policy Reviews*, by country, at:
http://investmentpolicyhub.unctad.org/IPR/Index
Interactive database of country specific investment policy reviews that spell out the current policy trends, main actors and strategies.