EXECUTIVE SUMMARY

CAROLINE PENN, PANOS PICTURES

While much has been written on the legal, normative, and development arguments for ensuring that host communities have the opportunity to provide their free, prior, and informed consent (FPIC) to a project, relatively little attention has been paid to the "business case" for FPIC. The argument is rarely made that it is in the financial interest of project sponsors and their financial backers to ensure that local communities have certain rights to provide or withhold their consent.

Most project sponsors and financiers tend to perceive the business case for community interaction in terms of "community engagement" or "consultation." Operationlizing FPIC is an evolving practice. As a result, when FPIC is considered, it is often regarded as being too difficult or ill defined to implement effectively, or as inconsistent with host country preferences or policies. In some situations, governments may conclude that the "national interests" in a project should override local concerns, or they may simply not be interested in ensuring the concerns of all stakeholders are addressed.

As a result, while many sponsors and financiers of high-risk projects require community *consultations* as part of their assessment or development procedures, they rarely require that *consent* be achieved as a key element for project development.

THE CASE STUDIES

This report demonstrates the business case for incorporation of FPIC principles in large-scale development projects. Drawing on four case studies from projects around the world, it illustrates how a company's ability to gain the approval of the host community can affect the project's success. In addition, it describes best practices and leading policy developments that provide practical guidance for implementing FPIC principles in global business practices.

The report includes four cases:

1. In the Philippines, the *Malampaya Deep Water Gas-to-Power Project* is the largest industrial development in the nation. The project extracts natural gas from below the seabed off the coast of Palawan Island and transports it more than 500 kilometers by undersea pipeline to a natural gas refinery plant in Batangas City on Luzon Island. It is a joint venture of the Royal/Dutch Shell subsidiary Shell Philippines Exploration (SPEX), Chevron Texaco, and the Philippine National Oil Company (PNOC).

Shell employed four strategies to gain community consent: (1) community outreach and interviews with key opinion leaders and decision makers; (2) information dissemination, education, and communication activities; (3) perception surveys and participatory workshops to introduce the project and validate initial survey results; and (4) participatory involvement in the formulation of environmental management plans.

Based on these activities, the project sponsors made significant changes to the project. Shell also recognized that the risks of community opposition can arise after the project has been implemented, and endeavored to maintain and cultivate its relationships with the affected communities during project operations. These efforts have succeeded in gaining community support for the project and significant, documented financial savings to the company.

2. In Argentina, the *Esquel Gold Project* is a proposed open-pit mine project near the town of Esquel. Esquel's residents are well-educated and socially cohesive; many moved to the community from more urbanized areas to enjoy its natural amenities and alpine charm.

The Esquel project is owned by Meridian Gold, a mid-tier gold producer based in Reno, Nevada. Meridian hoped to develop an open-pit gold mine 700 meters above and 7 kilometers east of the town. From the earliest stages of project development, the company did not share critical information about the potential benefits and risks of the project, or engage with the community to understand and address its concerns before they became points of contention. Meridian reacted to gathering opposition mainly by initiating a public relations campaign that proved to be counterproductive. The mining project was overwhelmingly rejected in a public referendum in March 2003.

As a result, a project that the company once billed as "the next chapter" in its growth has never been developed. According to financial analysts monitoring the mining sector, the events in Esquel created significant concern with respect to Meridian's share price. In addition, in February 2006 Meridian was forced to write down the value of the property by US $379 million. It remains to be seen whether Meridian will ever be able to gain access to Esquel's estimated US $1.33 billion reserves.

3. In Thailand, the *Samut Prakarn Wastewater Management Project* (Samut Prakarn) was conceived by the Pollution Control Department of the Government of Thailand (PCD) in the early 1990s to address the severe water pollution problems in Samut Prakarn province.

Due to its strategic location on the Chao Phraya River just southeast of Bangkok, Samut Prakarn province had become one of the most heavily industrialized and rapidly urbanizing provinces in Thailand. But its rudimentary sanitation and water treatment facilities could not handle the large volumes of wastewater produced by its 1.2 million residents and over 4,000 factories.

Recognizing the severity of the problem, the Government of Thailand asked the Asian Development Bank (ADB) to assist in the development of a wastewater management system for the province. The ADB recommended building two large central treatment plants, one on each side of the Chao Phraya River. Only one contractor submitted a final bid to build a single facility—not at the original east bank site, but rather at Klong Dan, more than 20 kilometers from the east bank of the river.

The residents of Klong Dan were not informed of the decision to relocate the wastewater treatment facility to their community. They objected to the nontransparent and nonparticipatory manner in which the change to the location was made, and to the fact that appropriate environmental or social assessments of the impacts at the new site were not conducted.

Community leaders also came to suspect that the decision to move the project was driven more by corruption and the desire to enrich a handful of politically well-connected landholders than by any considered assessment of the public interest. Thai authorities investigated and corroborated these allegations, and uncovered additional evidence of corruption.

Despite the fact that the project is 95 percent complete, all work on the project remains suspended as the PCD determines how to proceed. To date, the Government of Thailand has spent an estimated US $650 million constructing the project, and will need to spend an additional $140–$180 million to complete the facility and bring it online. The value of the economic benefits attributed to the project has already been reduced by about $1.27 billion, and the project is no longer economically viable under its original assumptions.

4. In Peru, the *Minera Yanacocha Gold Mine Project* (Yanacocha) is the one of the largest and most profitable gold mines in the world. Yanacocha is a joint venture of Newmont Mining Corporation (51 percent), Compañía de Minas Buenaventura of Peru (44 percent), and the International Finance Corporation, the private-sector lending arm of the World Bank Group (5 percent).

Yanacocha is a linchpin asset for each of its principal owners. Its six open-pit mines, five leach pads, and associated processing facilities sprawl across 160 square kilometers, five separate mountains, and four distinct watersheds. These existing facilities occupy only a small portion of the 1,725-square-kilometer concession on which Yanacocha owns exploration and development rights. After a relatively modest start in 1992, new discoveries led to rapid expansion.

By 1998, the mine was causing significant tensions between the company and the community. The situation worsened after a June 2000 accident involving the transportation of mercury that affected residents in several villages, and worsened further as a result of community opposition to the company's interest in mining Cerro Quilish, a 3.7-million-ounce deposit within the Yanacocha concession.

After a long legal battle that ultimately was won by the company, in September 2004 Yanacocha obtained a government permit to begin exploring Quilish and moved its drilling equipment onto the site. The public reaction was swift and intense. The protests culminated in a region-wide strike that included a mass mobilization of approximately 10,000 people in the public square in Cajamarca. The blockade was disbanded and protests were ended after local leaders and representatives of the Ministry of Mines negotiated an agreement with the company.

In early November, the company publicly apologized for its actions, formally requested that the Ministry revoke its permit to explore Quilish, and removed the Quilish project from its operations plans. Quilish's reserves are worth an estimated US $2.23 billion, and could have brought in about US $1.7 billion after production costs. Furthermore, the conflicts between Yanacocha and the community have placed more than just the Quilish reserves in jeopardy—other proposed expansions of the mine are now facing heightened scrutiny.

Based on these case studies, the report reaches a number of important conclusions:

- When businesses get it right, achieving consent can benefit both the community and the project.
- The business risks of going forward with a large-scale project in a community without its acceptance can threaten the viability of the project.
- Community opposition can arise from impacts that are generated at any stage in the project cycle.
- Addressing issues of community concern before the project begins is likely to be more successful and cost-effective than responding to community opposition later on.
- The risks of failing to achieve community consent are not borne exclusively by the project sponsor. Other stakeholders, such as shareholders, financiers, and host governments can also have their interests adversely affected by conflicts that may result from the failure to achieve community support of a project.
- Engagement or consultation may not always be sufficient to fully address these risks. Consultations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict.

THE BOTTOM LINE

Taking these findings from the case studies into account, the report recommends that each stakeholder take specific, affirmative steps to ensure that the free, prior, and informed consent of project-affected parties is secured before and during project operations, recognizing the operational uncertainties surrounding "community consent."

Most important, it recommends that project sponsors and financiers incorporate community involvement and consent procedures and requirements into their project and investment decision making, planning, and operations at the very beginning, and that host governments incorporate such procedures and requirements into their permitting processes.

We recognize that achieving FPIC can be challenging. Implementation questions—such as who should be empowered to represent the community, through what processes is approval given, how to overcome difficult enabling environments, and how FPIC should be verified—can defy easy answers and may vary significantly with the particulars of the local context.

The four case studies suggest six principles that may assist project proponents in crafting and implementing consent procedures that will mitigate the business risks associated with projects that do not adequately involve the community:

Information. Affected communities should be provided sufficient information in local languages regarding the proposed project. Project proponents should work with communities to understand the types of information the communities need to make informed decisions, and must allow sufficient time for communities to review and discuss information provided to them.

Inclusiveness. All interested community members should be allowed and encouraged to take part in the FPIC process, including stakeholders affected by indirect or cumulative impacts.

Dialogue. Dialogue within an FPIC process should be formalized, continue throughout the lifetime of a project, and include government and local stakeholder representatives.

Legal recognition. FPIC should be formally recognized through binding negotiated agreements. There should be a sufficient period of time for community decision making prior to project commencement.

Monitoring and evaluation. Opportunities for appropriate and independent community monitoring should be put in place. Monitoring and evaluation should be supported by independent grievance processes to ensure that community concerns are addressed throughout a project's lifetime.

Corporate buy-in. Project proponents should view FPIC as an inherent and necessary cost of project development. Where appropriate, developers should find constructive ways to channel funds to communities to maintain the integrity of the process and the independence of the community's role.

Community involvement and consent work best in a setting where the host country government recognizes these concerns as a matter of law or policy. Project proponents should work with governments to gain their endorsement and involvement in the FPIC process. To fully protect their legal rights and interests, proponents should develop with communities further procedures based on local conditions.