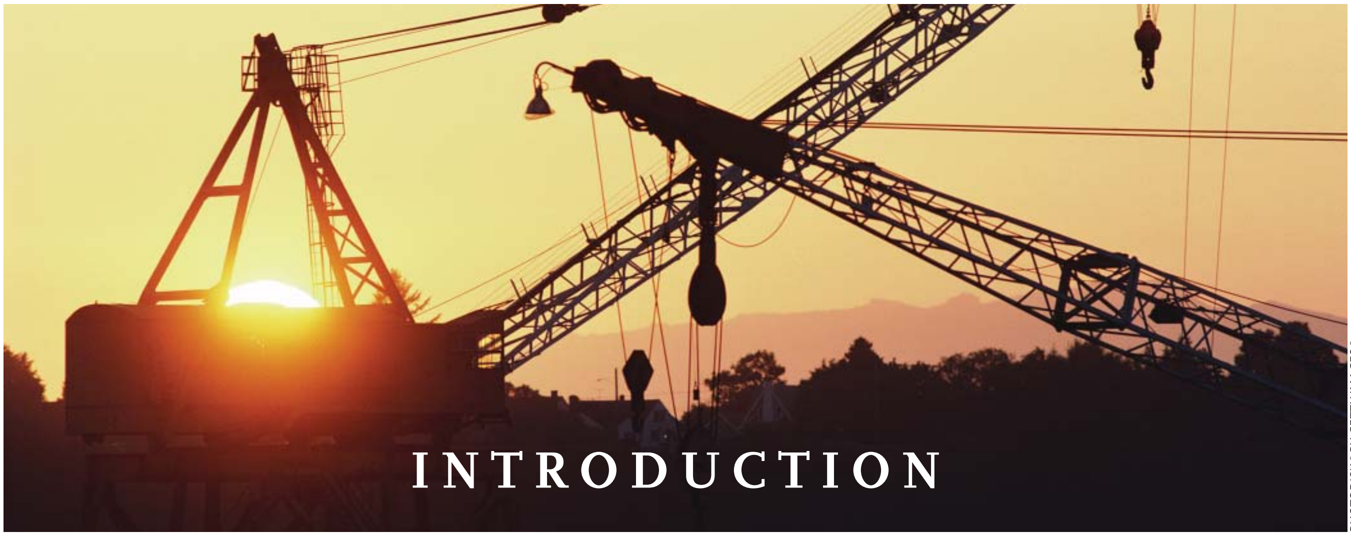

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INTRODUCTION

Developing a large-scale industrial project can be one of the most complex business transactions that a company can undertake. To bring a project online, a project sponsor must successfully address a daunting array of issues, and must gain the consent and cooperation of many different actors, including project shareholders, bankers, insurers, operators, public permitting authorities, contractors, suppliers, workers, and, when appropriate, customers. Reconciling the different expectations and interests of these stakeholders often requires lengthy, and even intense, negotiations to clarify the rights, obligations, and expectations of the parties, and confirm their agreement to participate.

Yet ironically, the stakeholders that may have the greatest interest in the project—the host communities—may often be least likely to have the opportunity to negotiate their interests or consent to the project. For communities that host a large-scale project, unlike for most other stakeholders, project decisions can literally be life altering. Whether a project goes forward—and how benefits, costs, and risks are allocated over the project's life cycle—can profoundly affect the lives, livelihoods, and development aspirations of communities, both positively and negatively, for years to come. While the interests of other stakeholders are subtly choreographed, host communities are often relegated to observer status.

"Free, prior, and informed consent" (FPIC, or "consent") is the right of communities "to exercise control, to the extent possible, over their own economic, social and cultural development."[1] Operationlizing FPIC is an evolving challenge. The answers to questions like What defines a "community"? and What determines "consent"? are debated. What is absolutely clear, however, is that the needs and concerns of a community that may be host to a project cannot be ignored or given short shrift.

There is a surprising lack of attention to the business case for community consent. Although the challenges of gaining consent can be considerable, the business case for not imposing a project on an unsupportive community is compelling. For one thing, the business risks of community opposition can be much greater, in both magnitude and likelihood, than many of the other project risks that project sponsors and financiers routinely seek to shift, mitigate, or insure against. The potential risks related to community opposition include:

- increased costs from delays in construction and operation;
- reduced demand for project outputs;
- reduced access to critical project inputs; and
- increased costs of mitigating environmental and social impacts.

Community opposition can also induce the government to halt operations, revoke permits, or impose costly fines on projects. In the worst case, the failure to properly manage these risks can threaten the project's commercial success or financial viability. Moreover, the adverse impacts of community resistance can also transcend the specific project and affect corporate operations more broadly. Potential corporate impacts include brand and reputational harms and greater difficulty in future projects.

On the other hand, project sponsors that demonstrate the support of their host communities can find it easier to gain regulatory approval for future projects, efficiently bring their products to market, attract skilled employees, or market their products to the growing pool of customers who consider production conditions and corporate sustainability practices in their purchasing decisions.

This report seeks to fill the gap in the existing literature by suggesting the business case for sponsors of large-scale, high-impact projects to treat the consent of the host community as a requirement of project development. The business case argument is set out in four sections. The first section provides context by briefly reviewing the origins and evolution of the FPIC requirement in international law and development discourse. It argues that while community consent first emerged as an international norm applicable to indigenous peoples, it has come to be widely seen as integral to the fair treatment of all communities.

The second section addresses the business case for FPIC. It describes the potential risks associated with developing projects that lack the support of their host communities, and the benefits that may be achieved from obtaining consent.

The third section focuses on case studies. Through a series of real-world examples, it illustrates some of the ways in which the risks of community opposition can manifest themselves in both public- and private-sector projects and how dealing with community concerns can lead to a successful project. To the extent possible, based on publicly available information, each case study quantifies the financial impacts that community opposition (or its avoidance) has had on the project and its sponsor. This section also includes boxes that explore several other aspects of the business case for FPIC that are not fully discussed in the case studies.

The fourth section offers a set of potential conclusions and recommendations that emerge from the case studies. It describes the substantial business advantages that can be realized from securing broad-based community consent before making major project decisions, and at each stage in project development and operations. It therefore recommends that each stakeholder take specific, affirmative steps to ensure that the free, prior, and informed consent of project-affected parties is secured before project operations.

Finally, Appendix A provides a list of resources to assist those who seek further practical guidance and best practices on how to conduct a FPIC process.