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THE BUSINESS CASE FOR COMMUNITY CONSENT

This report identifies six principles that are critical components of crafting and implementing consent procedures:

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.

Without these components, corporations run a dangerous risk that projects will not succeed or will fall below expectations. They also miss many significant benefits—in terms of cost savings; improved community, national, and international reputation; and ability to win acceptance of future projects. This section presents the business case for community consent, in terms of both the risks entailed in not following these principles and the potential benefits of gaining community consent.

REDUCING RISK

Sponsors of international projects are usually experts at negotiating the multiple administrative processes required to secure the permits and licenses necessary to develop a project.[29] However, they are often less adept at recognizing that regulatory approval does not necessarily imply the consent of host communities. Official approval processes often marginalize—or bypass entirely—host communities and other locally affected interests. And governments often lack the will or the capacity to help project sponsors negotiate agreements with host communities, or to enforce those agreements as the project moves forward. Host communities commonly complain that these processes do not adequately account for their concerns regarding the adverse environmental, social, and economic impacts of projects, or too readily allow them to bear a disproportionate share of the costs and risks of projects undertaken in the "national interest."[30]

In response, host communities in many countries have become more proactive about asserting their interests and less willing to allow their governments to have exclusive control over the terms of their participation. Communities are increasingly demanding a more pluralistic approach to project development that affords them a decisive voice in decisions about how the lands they occupy and the natural resources on which they depend will be utilized.[31] More and more, they frame this demand by insisting on the opportunity to grant or withhold their consent to projects that directly affect them.[32]

The failure to respect a community's right to FPIC may produce a strong public backlash, in the form of blockades, mass mobilizations, strikes, consumer boycotts, and litigation. In extreme cases, such conflict can lead to civil strife, violence, and human rights abuses. For example, efforts by the Philippine government in the 1980s to develop large infrastructure projects in territories indigenous peoples had occupied for centuries led to revolt, public campaigns, and significant project delays. Ultimately, the Indigenous Peoples' Rights Act of 1997 was passed as a result of these and other organized movements.

For project sponsors and their financiers, community opposition can introduce significant risks. At the project level, these include:

- reduced access to capital;
- increased construction costs and delays;
- reduced access to critical project labor and material inputs;
- operational delays and increased production costs;
- reduced demand for products (particularly name brand consumer items); and
- increased costs of post-hoc mitigation of environmental and social impacts.

Community opposition can also cause the government to revoke permits, impose fines, or even halt operations. Moreover, community resistance can have adverse impacts on corporate operations beyond the scope of an individual project, including negative impacts on stock prices, brands, and reputations, and greater difficulty in securing financing, insurance, and community cooperation in future projects. Each of these risks is discussed below.

Financing Risks

It may be far more difficult for project sponsors to attract cosponsors or to secure financing for projects that are opposed by their host communities. Investors and financiers may delay their involvement, require more lucrative terms as compensation for the additional risks, or simply decline to participate at all. For example, Manhattan Minerals was forced to abandon its plans for a mine in Tambogrande, Peru, after intense community opposition prevented the company from bringing a major partner into the venture.[33] Intense local opposition to a proposed US $1.7 billion paper mill on the Argentina–Uruguay border recently prompted ING Group to withdraw its consideration of financing the project.[34]

Construction Risks

Community opposition can significantly increase the risk that the project sponsor will not be able to complete the project on time, on budget, or at all. Blockades, work stoppages, and lawsuits can cause lengthy delays in the design, siting, permitting, and construction of the project, and can significantly raise the costs of construction. Construction delays can result in increased finance charges and contractual penalties for failure to deliver outputs. More important, major increases in up-front capital costs and delays in realizing expected revenue streams can significantly impact the project's expected financial rates of return. For example, indigenous peoples on the island of Mindanao in the Philippines waged a campaign against the Philippine National Oil Company's Mt. Apo geothermal plant, which delayed the project (and its revenues) for many years.[35]

Operational Risks

Community opposition can also increase the risks that the project sponsor will not be able to produce a sufficient quantity of output, or sell it at a sufficient price, to justify the investment. Through blockades, protests, work stoppages, and litigation, community opposition can

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raise production costs and impede the project's ability to bring the product to market. And through boycotts or adverse publicity, it can reduce the demand for a project's outputs. Similarly, community opposition can also increase the risks that the project will not have consistent access to sufficient, high-quality inputs for its operations. Community blockades can inhibit access to critical ecosystem service inputs, such as water supplies or timber reserves. And opposition can reduce the project sponsor's ability to attract and retain qualified local workers, can induce strikes and work stoppages, and can raise tensions to the point where it becomes uncomfortable—or even unsafe—for (particularly expatriate) management personnel to reside in the host community. Finally, community complaints can force the sponsor to incur additional costs to secure its facilities and develop and implement politically acceptable post-hoc environmental and social mitigation plans.

A particularly vivid illustration of how community opposition can disrupt operations occurred at Río Tinto's Panguna copper mine in the Papua New Guinea province of Bougainville. One of the most productive copper mines in the world at the time, Panguna was forced to close in 1989 after accumulated local grievances with the mine helped ignite a secessionist civil war that claimed the lives of thousands of Bougainville residents. It has never reopened.[36]

Reputation Risks

Reputation risk is "the current and prospective impact on earnings and capital arising from negative public opinion."[37] Though difficult to quantify, community opposition to a project can have direct and potentially far-reaching impacts on the reputations of project sponsors and their financiers. By partnering with media-savvy transnational advocacy networks, aggrieved communities can alert the global public to the impacts of a company's projects, even in the most remote corners of the world. As a result, the sponsor of a project that faces significant community opposition may find that other communities become much less willing to host its projects. And companies with global operations and high consumer visibility may find that their consumer brand identity can quickly be tainted by allegations that the company is coercive, predatory, and indifferent to social concerns. For example, in the early 1990s the threat of an international consumer boycott forced Scott Paper to abandon its plans for a US $635 million Indonesian eucalyptus plantation and pulp mill that may have displaced thousands of local residents and decimated huge swaths of tropical rainforest.[38]

Corporate Risks

Sponsors of projects that run into trouble due to community opposition can suffer a variety of collateral impacts on their balance sheets and their other operations. Reduced profitability and asset values of a project can decrease the company's stock valuation, particularly for less-diversified companies. Manhattan Minerals, for example, suffered a huge decline in its stock market valuation after the Peruvian government terminated its option to develop the mine when it could not find a major partner to cofinance Tambogrande.[39] In addition, the perception that a company cannot earn the support of host communities can adversely affect its ability to raise financing for future projects, or to negotiate acceptable terms and premiums for project insurance.[40]

Host Government Risks

Host governments are typically critical players in the development and operation of large-scale projects. In their permitting and regulatory roles, host governments often have the primary responsibility for addressing adverse impacts on affected parties and ensuring that mutually beneficial outcomes are reached. They also have the primary role in creating the enabling conditions for effective FPIC processes. In many cases, however, host governments lack the capacity or political will to fulfill these roles effectively. For example, governments in some instances conclude that the "national interest" in a project should override local concerns, and are not interested in ensuring that the concerns of all stakeholders are addressed. In these circumstances, the affected communities often hold the project sponsors responsible. Thus, in Bougainville, at least some of the antipathy of the residents toward the Panguna mine was caused by the insensitivity of the Australian colonial government to the land claims of the local residents at the time the mine was being developed. The local landowners believed that the Australian authorities did not seek their permission to develop the mine. Instead, they imposed Australian property law, which granted the rights to subsurface minerals to the government, in contradiction to traditional property rules.[41]

Moreover, communities that are aggrieved by a project may petition their government for redress, and their advocacy efforts may induce the government to significantly alter the way in which it discharges its regulatory functions. In response to local concerns, a government may commence enforcement actions or impose civil or criminal penalties on sponsors, tighten regulatory or statutory requirements, or withhold or withdraw necessary permits and licenses. Host governments may also void their commercial arrangements, withhold payments, or even nationalize, or renationalize, private assets.

Host Country Political Risks

Even if the government does not take action against a project's sponsors, community opposition can create other political risks in a host country. Most importantly, similar grievances in different communities in a country or region can accumulate to the point where the business environment for a company or industry is degraded. For example, despite continued government support for the industry, the local political culture of Peru has become demonstrably less accommodating to mining projects as a result of a number of high-profile conflicts between mines and their host communities.

RECOGNIZING THE BENEFITS

Aside from risk reduction, invoking a successful community consent process can produce significant benefits for the company, the region, and the environment. Community support can save time, which can yield significant monetary benefits.

For a large-scale infrastructure project, the total costs of engaging the affected communities and gaining their consent are likely to be extremely small relative to the total project costs. Moreover, a proven track record of harmonious community relations can make future interactions with government regulators much easier, and can help a project sponsor win public contracts for other projects. Thus, SPEX used its success with Malampaya to help convince the Philippine government that it was a suitable sponsor for a related project—the construction of an onshore pipeline from its natural gas refinery in Batangas to two nearby gas-fired power plants. SPEX was able to secure the support of the Philippine government for this project, even before it obtained the US $5 million investment needed it. Shell's success also has facilitated the company's efforts to develop new projects elsewhere around the world.