

Precept 5. Local impact of extraction

Technical Guide

1. Introduction: Objectives, Trade-offs and General Principles

This precept outlines the internationally accepted frameworks used to help resource extraction. The section 2 outlines the four areas which governments and other stakeholders should focus on to manage the local effects of the extraction process. These include producing a robust methodology to measure these effects, regulatory and institutional systems, as well as a structured framework to identify and mitigate risks and opportunities resulting from an extraction project. Section 3 highlights particular issues that should be accounted for in the process set out in section two.

Objectives

In addition to ensuring that maximum revenue flow is secured, and invested for transformative development, the maximization of public benefit also implies that the impacts of the extraction activity are taken into full consideration. Resource extraction has a range of economic, social and environmental effects at local levels. Where these effects impose local costs and benefits, governments should seek to internalize those externalities. Doing so effectively requires that environmental and social effects be identified and accounted for, with the aim of mitigating or compensating for costs while encouraging and enhancing benefits.

In practice this is challenging. While some of these impacts may be readily defined, others are less well known or are contingent upon what may actually occur in the affected areas (regardless of what has been agreed or promised). The effects of projects are likely to be unevenly distributed and options for offsetting or mitigating adverse impacts often involve difficult distributional choices within the country, affected communities, generations, and even families—distributional choices including the assessment and payment of compensation. Ensuring positive benefits beyond revenue flows requires pro-active leadership on the part of government and the engagement of all stakeholders—local authorities and affected populations, civil society and the extractive companies.

In fulfilling overarching objectives, specific government attention is often required for issues of long-term damages, widespread disruption to wellbeing, the rights of

indigenous peoples and other affected groups (including issues of prior consent), and the challenges posed by artisanal and small-scale mining (ASM). The search for positive impact depends critically on consultation at the local level and may involve negotiation of agreements on long term community development.

Trade-offs and General Principles

Local and national winners and losers. The uneven spatial distribution of resource wealth, combined with national ownership of subsoil assets on behalf all citizens, implies a trade-off between local and national costs and benefits. It is important for the government, in discussion with a wide group of stakeholders, seek to mitigate local impacts while maximizing local benefits of resource extraction, and balance the distribution of benefits across the countries as a whole. Additionally they must consider the rights of local peoples, in particular indigenous and marginalized groups. Consent of affected communities should be a prerequisite where negative consequences could be significant or where other cultural considerations apply.

Extraction decision. The decision over whether to extract raises complicated challenges, notably in the uneven distribution of costs and benefits. For example, should a project inflicting great environmental damage, with costs borne disproportionately by local communities, be allowed to proceed if extraction will realize very large benefits to the country as a whole? Public participation should be integral to the decision process.

Local capacity. Even good or politically acceptable decisions may be ineffective in the face of limited capacity in government or affected communities. Therefore, assessment of a project requires realistic evaluation of available institutions and possibly the devotion of significant resources to their improvement to ensure proper implementation of project decisions. In the interim, extra capacity can be procured on the international market or be identified as an early target for international assistance. Institutional limitations not only affect the reality of outcomes in well-intended projects; they may also encourage investors to cut corners or to ignore their obligations, increasing the risk of a 'race to the bottom'. That said, many of the major investors are now actively engaged in building the capacity of local institutions¹.

¹ The International Council on Mines and Metals (ICMM) Sustainable Development Framework (SDF) requires its membership to “contribute to the institutional development of the communities in which they operate” (SDF Principle 9).

Investor capacity. The capacity and training of project sponsors, contractors and operating companies are also important. The International Finance Corporation (IFC) recommends that project sponsors ensure and demonstrate to the satisfaction of the host government that they possess the organizational capacity necessary to assess, manage and mitigate the environmental and social impacts of a project. This assessment of capacity includes the organizational structure required to effectively accomplish project goals while minimizing, mitigating and compensating for environmental and social impacts. Major extractive companies typically have detailed internal guidelines designed to ensure the requisite capacity is there and good practice is observed. Unenforced environmental plans and policies may be worse than none at all, since they give the illusion of investor compliance².

Public participation. In judging the trade-offs, any specific policy calculus must be based on citizens' values and the particular circumstances they face. However, there are certain common principles that governments (and investors) can adopt to make informed decisions, and to make those decisions politically legitimate, and therefore more robust. Public participation is integral to effective assessment of impacts and the stability of decisions made and is best begun as early as possible in the decision-making process. In particular, affected communities should be involved at the earliest stages, beginning with exploration and subsequent project planning.

Transparency. For such consultation to be effective, stakeholders must also have access to information, and there must be transparency in both decisions and their implementation. A decision to defer project development until risks are better understood, technology improves or costs are reduced, may be appropriate.

Vulnerable groups. Disparate impacts are possible and even likely. When pursuing the earliest possible assessment of impacts and public consultation, engagement with, for instance, women's groups facilitates the explicit identification of effects that fall specifically or disproportionately on women. Others, such as the elderly and youth groups, require similar attention.

Long term commitment. Accounting for and mitigating social and environmental effects is a continuous process. Projects typically have long lives. Circumstances will

² Institutional limitations may distort decision making in other ways. Where government institutions are weak, there is a tendency to call on the investor to provide health, education and other governmental services to the community. In some circumstances this may be the only effective resolution, but the better result would be, and certainly the long term goal should be, to build and support government capacity in these areas so that government can take on its normal responsibilities.

change over time and new problems (and new opportunities) will arise. Reflecting this reality requires an ongoing set of formal and informal mechanisms among the principal stakeholders to confront and adjust to changing circumstances. Ongoing reclamation and remediation paid for by operators out of revenues is likely to be most efficient and avoids the build-up of a large environmental liability. Environmental and social plans for closure also need to be prepared along with appropriate sinking funds or posting of bonds, particularly as closure approaches and before cash flow from operations becomes negative.

Monitoring and reporting. The IFC recommends that ongoing mechanisms include internal monitoring and reporting on the part of project sponsors. Governments should require internal monitoring and reporting regarding a project's compliance with applicable measures. To properly identify impacts and maintain stakeholder trust, it is best that the results of such monitoring are shared with government and other stakeholders, including national civil society groups. To ensure this information is reliable, independent monitoring, with results reported to government, is recommended.³

2. Implementation

How should governments and project sponsors go about implementing the above general principles and calculating the trade-offs? This section explores four areas which governments should focus on:

- Measure the costs and benefits of extraction
- Establish a regulatory framework
- Build institutional capacity
- Follow a structured project assessment framework

Cost-Benefit Analysis

In weighing costs and benefits, social and environmental impacts and risks can be quantified by the project sponsors and reported to government in a fashion that permits measurement against the expected benefits of development. Expected

³ IFC Performance Standards. Available at www.ifc.org/performancestandards

benefits should include not only impacts at the national level in terms of investment, exports and government revenue, but also and especially, local benefits such as employment, goods and services, community development, and indirect local and regional economic multiplier effects. In deciding whether to extract or determining the scale of impacts (and thus the costs of mitigation and compensation) costs and benefits need to be measured within the context of an overall strategic vision or development plan and be consistent across projects. Best practice requires that the overall assessment be updated and submitted to government annually.

Measurement of costs and benefits is difficult. This is particularly so for social costs and benefits which are less easily quantified than environmental impacts. However, considerable effort has gone into the development of measurement methodologies and these are now readily available⁴.

Responsibilities, Regulations and Oversight

Host countries should establish, ideally in legislation, clear institutional responsibilities for the management of environmental and social issues in the resource sectors. Given their very different natures, environmental issues are typically assigned to the ministry of environment, while social issues are dealt with by a ministry or agency that is responsible for social affairs. Ministries are generally responsible for policy, and the drafting of laws and regulations, while agencies are charged with operational oversight and their enforcement. Effective oversight requires close coordination amongst all interested ministries or agencies, especially with the sector ministries and agencies.

In implementing technical environmental, health and safety controls designed to mitigate impacts, government will need to develop and enforce industry- and project-specific regulations and guidelines. Similar guidelines will be required governing the management of social impacts. Environmental and social legislation should clearly set out the procedures companies should follow in meeting regulatory requirements and identify the agencies responsible for, and criteria applied in review and approval processes. Penalties for violation of, or non-compliance with requirements should be clearly specified. Particular emphasis

⁴ See, for example, ICMM (2011) Mining: Partnerships for Development Toolkit. Available at: <http://www.icmm.com/mpdtoolkit>

should be placed on monitoring and reporting arrangements, providing for public reporting and governmental audit or verification. When new regulations are issued, these should ideally apply to all companies operating in the resource sectors, including those with ongoing operations; contractual provisions protecting companies against any potentially adverse changes in regulatory requirements should be avoided.

There are many accepted international guidelines that can form the basis of these controls, developed by international standards organizations (e.g., the International Organization for Standardization, ISO), international financial institutions⁵, and industry itself⁶. The Equator Principles, a voluntary set of standards for determining, assessing and managing social and environmental risk in project financing, are often referenced⁷. Finally, actual legislation or regulations in other resource-rich countries can often serve as models where they are recognized as representative of good practice. In choosing a regulatory model host countries should avoid overly complex and rigid regimes which are beyond their capacity to enforce and may undermine credibility. In a growing number of countries, legislation is supplemented by requiring investors with good track records to comply with codes of conduct developed by the investor, agreed with the authorities and incorporating references to best international practice.

A distillation of best practice in regulatory design and implementation is given below, and in Section 3.

Institutional Capacity

Environmental and social issues are common to many resource-rich countries, and, as suggested, good legal and regulatory frameworks are generally available for reference or adoption. The fundamental issue, then, is not so much the design of environmental and social legislation and regulations, but rather the capacity of government agencies at national and, importantly, at local levels, to monitor and enforce those laws and regulations. Without adequate capacity, well-designed

⁵ See, the World Bank's Environmental, Health, and Safety Guidelines and the performance standards of IFC. At www.ifc.org/sustainability.

⁶ ICMM Toolkit, op.cit.

⁷ www.equator-principles.com

regulatory frameworks will be ineffective. With appropriate capacity, however, even rather general requirements can significantly reduce environmental and social hazards and promote positive outcomes.

Emerging best practice is to undertake a Sector Strategic Environmental and Social Assessment (SESA). SESAs are designed to: identify environmental and social priorities among sector stakeholders; provide institutional, political and regulatory capacity assessments; and prepare recommendations for improvement, especially with respect to strengthening of the capacity of environmental and social authorities. Follow-ups to SESAs require a sustained effort to ensure successful implementation. Issues requiring particular attention include: recruitment; skills; training; salaries; resources (computers, data and record keeping systems, operational budgets). Adequate funding for the engagement of consultant experts is important. Close coordination with sector ministries and agencies can help address technical gaps in agency capacity.

Project-by-Project Implementation

The project-by-project implementation of best practice guidelines can be divided into four broad stages:

- the pre-project Environmental and Social Risk Scoping;
- An Environmental and Social Impact Assessment;
- An Environmental and Social Management Plan; and
- the final Project Closure and Decommissioning Plan.

Environmental and Social Risk Scoping. The project sponsor (whether state or private) determines the scope of a proposed resource development project. The scoping phase involves defining and quantifying the magnitude and risk of potentially negative environmental and social effects based on the size and nature of the particular project. This requires impact assessments and the creation of management plans tailored to the specific risks of the project. The larger the anticipated negative effects, the greater the need for analysis, management and mitigation. Scoping will identify gaps in the information required to make such assessments. Project sponsors should determine the best methods for collecting data to fill these gaps. Scoping should also include identifying opportunities where projects can produce beneficial outcomes.

During this phase, project sponsors should consult early with members of the public, local communities (including women's, elderly and youth groups, separately from men), indigenous peoples, government and other stakeholders regarding potential environmental and social impacts. As noted above, this is a source of both data and legitimacy for any project. Addressing women's groups separately is key: it is increasingly recognized that environmental and social impacts are unlikely to be the same for men and women (they tend to fall more on the latter). Thus these effects need to be explicitly accounted for and addressed.

Environmental and Social Risk Assessment. For each project with adverse environmental or social impacts, government should require the project sponsor (whether state or private) to submit an Environmental and Social Impact Assessment (ESIA).

International ESIA standards derived from the existing requirements of international lending institutions such as the IFC, the International Bank of Reconstruction and Development (IBRD), and those institutions subscribing to the Equator Principles. Preparing an ESIA is a job for qualified experts. Where anticipated social and environmental risks are significant, independent experts should be hired by the project sponsor.

In particular, a ESIA should include:

- Assessment of short- and long-term risks according to:
 - direct impacts (e.g., the project site and surrounding communities, including infrastructure such as ports, pipelines, pumping stations, roads and railways, as well as all the plant, equipment, landfills, and other facilities at the site);
 - indirect impacts, cumulative impacts, trans-boundary impacts (e.g., from air emissions); and
 - global impacts (e.g., greenhouse gas emissions).

This analysis of impacts should cover the primary stages of a project (i.e., preconstruction, construction, operation, closure, and post-closure).

- Assessment of the effects on air, soil, water and wetland, the local biological systems (including the identification of “no-go zones”). In the mining sector, the management of mine waste and tailings merits special attention. In petroleum extraction, the potential for spillage and leaks will require careful assessment. In both sectors, safe handling, transport, use and disposal of hazardous materials is critical.

- Assessment of social and cultural risks, including the effects on local communities and land use, issues affecting women, youth, and the elderly and those affected by involuntary resettlement.⁸ Because of the complex competing claims, land ownership and customary use needs special attention. The impact of extractive projects to be considered within the context of the government’s overall land use plans.
- Collection of reliable and appropriate gender-disaggregated social and environmental information, including an accurate description of a project based on the analysis conducted during the scoping phase.
- Research by the project sponsor where baseline or other data necessary for analyzing potential social and environmental risks and impacts does not exist.
- Consideration of alternatives with preferable environmental and social consequences and documenting of the rationale for selecting the chosen course of action. Such alternatives include postponing or cancelling the project – the “no action” option. They may also include resource clusters or corridors where minerals or petroleum developments can contribute to broader economic growth.
- Identification of mitigation measures and opportunities for positive economic and social effects. This includes efforts to mitigate the impact on vulnerable populations (e.g., indigenous peoples) or environments (e.g., protected areas) that could be disproportionately affected. These can then be included in the Environmental and Social Management Plan – see below.
- The addressing of compliance with applicable laws and regulations, including treaties and other international agreements.
- Analysis of the cumulative impacts of existing, planned and proposed future projects.

If it is to serve as an effective standard to which stakeholders can be held accountable, an ESIA must be transparent. Government can require the effective distribution of the ESIA to members of the public, especially at the local level, in a manner that ensures understanding of the costs and benefits of the project. In addition to being publicly available, an ESIA should be cheaply accessible and

⁸ The listed environmental and social factors in the text are not comprehensive. Any ESIA should address all potential environmental and social project-specific impacts.

comprehensible to a broad audience; this requires appropriate methods of distribution (e.g., direct contact, meetings, postings), and communication (e.g., appropriate languages, oral presentations). Comprehension also requires time, as well as attention to the mode of presentation. Affected communities will need time to review and comment on the ESIA before a project commences. To be fully effective these comments should be met with a response from project sponsors.

Environmental and Social Risk Management and Mitigation. Once the ESIA has been produced, a typical project prepares an Environmental and Social Management Plan (ESMP) consisting of operational policies, procedures and practices designed to reduce the risk of adverse environmental and social impacts and increase the potential for benefit during each phase of a project. As with the ESIA, an ESMP should comply with the performance standards and guidelines developed by international standards organizations and the international financial institutions.

An ESMP should include:

- Mitigation measures, identified in the assessment phase, and operational procedures, to avoid, minimize or otherwise mitigate any social and environmental risks or adverse impacts of the project. If risks and adverse impacts cannot be avoided, the ESMP provides for appropriate compensation to affected communities.
- Measures to develop a shared understanding among government (particularly local government), investors and the affected community on how benefits can be increased and shared.
- Measures necessary to comply with applicable laws and regulations.
- A method for monitoring and verifying the effectiveness of the ESMP. Methods include internal and external reviews, inspections and audits. Monitoring should be flexible to adjust to changing conditions and experience.
- Regular updates as necessary to reflect changes in circumstances or applicable standards. Amendments should also incorporate necessary revisions identified through monitoring.
- Emergency preparedness and response measures designed to mitigate impacts from unforeseen and foreseeable accidents and events.
- Government-mandated requirement for project sponsors to operate in accordance with the ESMP and to provide periodic reports of compliance as

well as any developments requiring an amendment of the ESMP. To be effective, such a requirement should be coupled with strict monitoring of the project sponsor as they implement the ESMP and prompt corrective actions to rectify unsatisfactory performance.

- To ensure that an ESMP does meet these standards, the risks and impacts identified can be disclosed to affected community members during operations. This provides the public with the means to hold project sponsors and government accountable via mechanisms for feedback.

Project Closure and Decommissioning Plan. Each project needs its own comprehensive closure plan. This should include:

- rehabilitation and reclamation of affected areas;
- decommissioning, removal and disposal of unwanted equipment and facilities;
- transfer of any useful assets (including company owned housing, health, or educational facilities) to local authorities or communities;
- arrangements for post-closure site monitoring, if needed; and
- the continued viability of affected communities.

For new projects, an initial closure plan should be submitted to government with the ESMP. Closure plans should also be submitted for existing projects, if they do not yet have one. The closure plan will need adjusting and refining over the life of the project to take account of changing conditions and information.

Where feasible, the closure plan should include mitigation exercises that can be undertaken *during* the period of active operations, as well as after closure.

Government confidence in the closure plan can be secured by financial assurances to fund the expected costs of implementation on the part of the sponsor. To be robust, such assurances cannot be exposed to the risk of bankruptcy or insolvency of the project sponsor, or be exposed to risk of misuse or use for other purposes by the government.

Closure plans should account for applicable laws and regulations including reclamation and cleanup standards and requirements. The project sponsor should consult with stakeholders during the development or amendment of the closure plan and provide a mechanism for feedback and comments.

Finally, provision must be made in the host country fiscal regime for the investor's recovery of costs incurred in closure or decommissioning (see Precept 3). More generally, all costs incurred by the investor in complying with environmental and social regulations should be similarly recoverable.

3. Special Issues

In addition to general principles and trade-offs identified in the introduction there are a number of special issues that can guide the design and implementation of process identified in Section 2.

Public and Community Involvement. Meaningful, informed community involvement is based on a continuing dialogue between project sponsors, government and members of the public, including both community-wide groups and women's groups and other especially vulnerable groups, who may be affected by the project. Conducting this process at the local level is especially important, since it is here that direct environmental and social impacts will be greatest. Consequentially it is here, absent appropriate consultation, that tensions will be the greatest, increasing the potential for disruptions to operations and lost opportunities for benefits.

Consultation should begin early in the scoping and assessment phase of the project and should include prior distribution of information in a form that can be understood by the community and in a manner that meets its needs. Consultation with the public involves disclosure of (a) risks at the assessment phase and (b) progress during—and results of—the implementation of the ESMP throughout the life of a project.

Just as important as the identification of risks and mitigation measures is the identification of positive opportunities. Best practice now calls for collaborative preparation and implementation of community development plans, incorporating, among other things: support to local planning capacity; job skills training programs; micro-finance schemes; community-controlled trusts and development funds; undertakings with respect to local employment, local procurement and the sourcing of goods and services. A number of countries have begun to formalize such undertakings in a Community Development Agreement (CDA), and consideration is being given in some cases to making CDAs a condition for the awarding of extraction licenses.

There are both formal and informal processes for community involvement and conveying relevant project information, such as local public stakeholder meetings. Both types of process can be used to take into account public viewpoints in discussion of project authorization.

Disputes are likely to arise during consultation. Channels of communication must therefore be supplemented by processes for formal and informal dispute resolution. Institutions for consultation and dispute resolution will only serve their purpose if members of the local community, public, and stakeholders have access to them. Governments should see to this as a supplement to their common functions of ensuring access to administrative and judicial remedies where necessary.

A growing body of country case studies is confirming the benefits of early and inclusive consultation, as well as the risks incurred where consultation is ignored or only partial⁹.

Compensation. Negative impacts that cannot be avoided or mitigated require compensation, preferably consisting of non-monetary reparation (including asset replacement and rehabilitation measures) for all lost assets including land (with or without formal title), access to resources, the ability to provide for oneself or one's family, common property, cultural property, and access to public facilities and infrastructure. The absence of formal title to these assets is no barrier to suffering the adverse impact of their diminishment; so it should prove no barrier to compensation either.

Given this breadth of asset types and other constraints, non-monetary reparation may not always be possible. Further, revenue-sharing is often part of the compensation package to local communities and is necessarily monetary.

For both monetary and non-monetary compensation, procedures for disbursement and rehabilitation measures will be more effective if they are designed in consultation with the affected communities and people. Timely compensation is effective compensation: provided prior to or contemporaneous with adverse impacts it will minimize the force with which they are felt, and better enhance the legitimacy of the project in the eyes of affected communities.

⁹ The ICMM website (<http://www.icmm.com>) provides a valuable collection of country cases based on in-depth research and interviews on the ground with stakeholders. Several of these are listed in the references attached to this precept. See Chile and Lao PDR for positive cases; Ghana and Peru for cautionary stories.

In the case of monetary compensation it is critical that both the capacity to administer funds and procedures to ensure transparency and accountability are in place. Without such precautions, there is a substantial risk that compensation will be dissipated or misappropriated¹⁰.

Employment and Workers' Rights. The extractive industries are not labor intensive. Nevertheless, employment creation at the local level, properly designed, can provide an important benefit. This potential can be maximized and serve as effective compensation for negative impacts if priority is given to workers in local communities that are directly affected by the project and to the use of local materials, processing and manufacturing. Equal opportunity and treatment can be promoted by recruiting training and advancement of workers based on merit. Where appropriate, however, preference should be given to workers from communities affected by the project. Skills training will be an essential prerequisite in most instances.

Employment security is preferable to a culture of arbitrary dismissals. If an employment change is necessary, prudence suggests that reasonable notice be given to the appropriate government authorities and worker representatives to appeal the shift, or better manage its consequences. The need to take such measures can be reduced by providing relevant training for all levels of workers and management. This also ensures benefits are passed on to the populace after the lifetime of a project.

Adequate wages, benefits and conditions for workers should not be less favorable than those offered by comparable local employers; it should be related to the economic position of the employer and country and meet the basic needs of workers and their families. Workers, their families, and (as appropriate) the larger affected community, will need adequate infrastructure and amenities that may not exist prior to the commencement of a project. Providing such water supply and treatment, sewage and waste management, electricity, health and education services, accommodation, transport and communication access, is the responsibility of government and the private sponsor. Together they should assess deficiencies and potential bottlenecks in the early stages of development.

Maintaining internationally accepted standards of safety and health (including emergency and accident response), and providing information on hazards to workers, government authorities, and workers' and employers' organizations are

¹⁰ See ICMM (2007) Ghana Country Case Study.

important and generally accepted responsibilities of project sponsors. Fulfilling them effectively is best served by a process for regular consultation between workers and employers, including processes to address grievances.

Employment of Women. The employment of women can be promoted both directly by project sponsors and through encouragement and support for microfinance. Government and project sponsor training may be required so that women possess the skills for job openings at an extractive project. Women's full participation in the project requires a safe and harassment-free workplace, with separate and appropriate changing and bathroom facilities, appropriate work clothing, working hours that accommodate the family responsibilities of women where possible, and child-care facilities.

Involuntary Resettlement.¹¹ Resettlement refers to physical displacement (loss or relocation of fixed assets including shelter and land) and/or economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood). The term encompasses those who may not be physically displaced, but are negatively affected by project impacts that result in loss of means of livelihood (e.g., downstream flooding or loss of access to natural resources). Resettlement is involuntary when affected persons or communities do not have the right to refuse resettlement.

When resettlement cannot be avoided or minimized, sufficient investment resources and opportunities will be needed for displaced persons and communities so that they are adequately compensated by alternative dwellings and livelihoods.

When designing land-based resettlement mitigation, preference should be given to displaced persons with land-based livelihoods. Cultural considerations will also need to be taken into account when identifying appropriate resources, living conditions, and income-earning opportunities.

During the planning, implementation and monitoring of resettlement, special attention to consultation will be necessary, including close engagement with the affected persons and communities, including women separately from men. Particular attention will need to be paid to impacts on the poorest and most vulnerable. Resettlement should be designed to improve their socio-economic position, providing not only alternative dwellings but also suitable replacement earning opportunities that maintain their incomes.

¹¹ See Downing (2002)

Rights of Indigenous Peoples and other affected communities.¹² The rights of indigenous peoples in the context of resource development pose special moral and political issues that must be addressed by both government and project sponsors. Indigenous peoples have inherent rights derived from their distinct ethnic and cultural identities and their close and special attachment to ancestral lands. These entail the right to maintain and develop these characteristics, identify themselves as indigenous, freely determine their political status, and pursue their economic, social and cultural development. Governments and project sponsors should recognize these rights and not discriminate on the basis of indigenous peoples' status. Obtaining a “social license to operate” may require specifically tailored consultations prior to the commencement of operations. In some cases, this may require minimal effective consultation (or none at all), as with un-contacted or other isolated groups of indigenous peoples. These special cases will thus need to be the subject of extra efforts and vigorous government efforts on their behalf if impacts are to be properly identified and mitigated.

To the maximum extent practicable, prior to any unavoidable relocation, project sponsors should obtain the “free prior and informed consent” (FPIC) of indigenous peoples, acting in accordance with national law, international agreements, and widely recognized best practice. Any involuntary resettlement should be in accordance with the principles laid out above, taking into account the special rights of indigenous peoples and society’s obligations to them. Involuntary resettlement is only one criterion for FPIC. The IFC now also recognizes the criteria of significant impact on communities and the use of cultural property¹³.

It is important to note that while “indigenous peoples” is a widely recognized term, many countries take extreme exception to its use, arguing that all their citizens are indigenous. In such cases the focus should simply be on those groups clearly affected by the extractive activity and, where the expected impact is significant, assurances are obtained that the project has broad community support¹⁴.

Cultural Heritage and Resources. There are “internationally recognized practices for the protection, field-based study, and documentation of cultural heritage” and resources which governments can require project sponsors to follow.¹⁵ Project

¹² See Downing, et al. (2002)

¹³ IFC, Performance Standard 7, Indigenous Peoples

¹⁴ The IFC takes this approach in considering non-indigenous peoples projects.

¹⁵ IFC, Performance Standard 8, Cultural Heritage.

sponsors fulfill such obligations by accounting for the impact on cultural resources. If government or the project sponsor determines that a project potentially harms cultural resources, consultation with affected communities and the appropriate government preservation agencies will be required. To be effective it will need to be sustained throughout all phases of the project.¹⁶

Artisanal and Small-scale Mining.¹⁷ Governments can act to enhance the positive effects of Artisanal and Small-scale Mining (ASM) while mitigating the negative consequences of resource extraction in this sector. ASM has a poor reputation for health and safety, environmental impacts and generating sustainable livelihoods. However, opportunities exist to enhance the contribution to community development on the part of ASM through ensuring it operates in the formal sector, and the diversification away from dependence on such activities. ASM's contribution to poverty alleviation and local economic development could be enhanced by investing a proportion of the revenue generated in other forms of capital, education and alternative income-producing opportunities. Alternatively, stakeholders could ensure that ASM activities are incorporated into broader local development planning.

Governments can, where appropriate, designate approved ASM sites at or close to existing mining locations in order to facilitate legal and normalized ASM activity. As with larger-scale mining activities, the government should act to mitigate the negative environmental and social impacts of small-scale mining as well as adverse impacts on human health. Elimination of child labor in mining activity should be a priority for governments in the ASM sector.

Climate Change. In implementing their assessments and management plans, project sponsors and other stakeholders should comply with all applicable local, national, and international laws and requirements with respect to climate change. Project sponsors should assess and report anticipated and actual greenhouse gas emissions to the government on an annual basis. Strategies to reduce greenhouse gas emissions throughout the lifecycle of a project and shift toward technologies that

¹⁶ IFC, Performance Standard 33

¹⁷ Further discussion of the impacts of the ASM sector and opportunities for better practice and governance of ASM can be found in the Hentschel, et al. (2002) and Mining, Minerals and Sustainable Development (2002).

Working papers regarding artisanal mining in specific countries are available from MMSD at: <http://www.iied.org/sustainable-markets/key-issues/business-and-sustainable-development/mmsd-working-papers>.

reduce the carbon intensity of a project will facilitate such compliance. Financial penalties for the flaring of associate natural gas in the case of petroleum production provide one example.

Protected Areas.¹⁸ Protected areas are areas of land or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and cultural resources, managed through legal or other effective means.¹⁹ The permission to undertake extraction in protected areas should correspond to the applicable laws. Where development is allowed, project sponsors may be faced with special requirements to account for and, to the greatest extent possible, mitigate the adverse impact on protected areas in all stages of a project.

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¹⁸ See Philips (2001)

¹⁹ ICMM Toolkit, op.cit.



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