



Near the community of Ka Chok, villagers are concerned about a mining concession granted to a Vietnamese company. Local farmers were not consulted about the concession and worry that they will not have access to farm lands in the forest. Photo: Patrick Brown/Oxfam

COMMUNITY CONSENT INDEX 2015

Oil, gas, and mining company public positions on Free, Prior, and Informed Consent

As large-scale oil, gas, and mining projects move to increasingly remote areas, they threaten to generate adverse impacts for the local communities and indigenous peoples who inhabit these areas. For many project-affected communities, Free, Prior, and Informed Consent (FPIC) represents a critical tool for ensuring that they have a say in whether and how extractive industry projects move forward. This policy brief examines publicly available corporate commitments regarding community rights and community engagement. The results suggest increasing commitments to FPIC in the mining sector but disappointing trends in relation to the oil and gas sector and women's participation in decision making.

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SUMMARY

As large-scale oil, gas, and mining projects move to increasingly remote areas, they threaten to generate adverse impacts on the land and natural resources of the local communities and indigenous peoples who inhabit these areas. For many project-affected communities, Free, Prior, and Informed Consent (FPIC) represents a critical tool for ensuring that they have a say in whether and how extractive projects move forward.

Oxfam defines FPIC as the principle that indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation, and should be given the opportunity to approve or reject a project prior to the commencement of all activities. For indigenous peoples, FPIC is established as a right under international law, reflecting their standing as distinct, self-determining peoples with collective rights. However, FPIC is emerging more broadly as a principle of best practice for sustainable development, used to reduce conflict and increase the legitimacy of the project in the eyes of all stakeholders.

This policy brief examines publicly available corporate commitments and policies regarding community rights and community engagement with a particular focus on FPIC – the gold standard in terms of extractive industry community engagement practices.¹ The research includes 38 oil, gas, and mining companies, and provides an update to our 2012 Community Consent Index. The main purpose is not to evaluate company commitments in practice but to highlight changing trends across the industry in order to encourage a race to the top among company policies.

This report suggests that extractive industry companies are increasingly seeing the relevance of FPIC to their operations. This includes more robust engagement with the concept and an increasing number of companies using the term. The number of companies with commitments to FPIC has almost tripled since 2012. Importantly, this list now also includes smaller, non-ICMM companies—a promising development that again highlights wider acceptance of FPIC within the industry. However, this trend masks a number of issues. First, the oil and gas sector is clearly lagging in adopting FPIC policies, with no public commitments from any of the companies included in this report. Second, although policy commitments to FPIC are increasing, these lack detailed implementation guidance, and some companies have reservations relating to the core right to withhold consent. Companies that use vague and hedging language with regard to FPIC risk abusing a concept that has been defined clearly by international bodies and law.

No companies reviewed for this report have made public commitments to uphold FPIC for non-indigenous project-affected people. However, community engagement is recognized as being crucially important for the sector, and the emergence of language around community “support” and “agreement” shows a general upward trend. Many company policies now

require more than mere community consultation and require companies to seek community support as well.

Unfortunately, there is very little consensus across the industry about the language used in community support. Definitions of terms such as “broad community support” and “social license to operate” vary widely among companies. This is problematic on a number of fronts. Without clear commitments from companies to incorporate community input and respect community decisions, and clear and public guidelines on consultation process, it will be difficult for affected communities to influence company plans, participate in decision-making processes, and negotiate benefit-sharing agreements. Furthermore, without a shared understanding of the meaning behind these community engagement concepts, the risk of conflict among and within communities is increased and corporate accountability is weakened.

Oxfam has developed a spectrum of community engagement applicable to extractive industry projects that ranges from low (one-way information sharing) to high levels (FPIC). The figure below summarizes companies’ public commitments along the spectrum. Note that companies may refer to various levels of engagement in their public policies and statements but are listed here only under their highest-level commitment. Importantly, all 38 companies in the sample at least commit to consultation or dialogue with communities.

Figure 1. Oxfam’s community engagement spectrum—public commitments



Although the industry is changing, much remains to be done to ensure full recognition of FPIC. Those companies that have not yet done so should adopt an explicit and unambiguous policy commitment to FPIC and develop publicly available implementation guidelines. All companies should conduct thorough and participatory monitoring and evaluation of FPIC processes being implemented. Companies should also develop clear and overarching commitments to gender that respect the rights of

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both women and men and involve both women and men in consultation and decision-making processes. Oxfam hopes that this report will serve as a tool for civil society organizations working to improve the social performance and policy of extractive companies, and for companies aiming to build trust with local communities and reduce the risk of social conflict around their projects.

1 INTRODUCTION

Although extractive industry companies profit from the minerals, oil, and gas sourced from resource-dependent countries, poor people living in these countries and on lands affected by these projects often see little benefit from the wealth generated by these natural resources. The hunt for resources inevitably leads to contact between extractive companies and local communities, and as businesses foray deeper into remote regions to keep pace with rising demand, the potential for social conflict increases. Project-affected communities across the world are demanding a greater voice in extractive operations. Their meaningful engagement throughout the project cycle not only mitigates potential negative impacts but can also increase the likelihood that a community can benefit from an extractive project. For many project-affected indigenous peoples and local communities, Free, Prior, and Informed Consent (FPIC) represents a critical tool for ensuring that they have a say in whether and how extractive industry projects move forward.

Box 1. Free, Prior, and Informed Consent

Oxfam defines Free, Prior, and Informed Consent (FPIC) as the principle that indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation, and should be given the opportunity to approve or reject a project prior to the commencement of all activities. FPIC processes must be ongoing. Project developers should facilitate community participation in decision making throughout the life of the project, and communities should have the opportunity to give or withhold their consent at each phase of project development where changes to project design entail potential impacts on communities.

For indigenous peoples, FPIC is established as a right under international law. Indigenous peoples' rights under international law reflect their standing as distinct, self-determining peoples with their own distinct decision-making processes, laws, practices and institutions, and collective territorial, self-governance, and cultural rights.

However, FPIC is emerging more broadly as a principle of best practice for sustainable development, used to reduce social conflict as well as increase the legitimacy of the project in the eyes of all stakeholders and rights-holders. Local communities face significant risks related to extractive industry projects yet often have little influence on project decisions.

Governments approve projects in capital cities, arguing that these projects contribute to a "public purpose" to justify compulsory land acquisition. This premise proves tenuous, given the potential significant environmental and social impacts associated with extractive projects, and in light of the well-documented "resource curse" phenomenon whereby developing countries that rely heavily on oil and mineral exports tend to have relatively poor development outcomes. As a best practice, all local communities that face potential significant adverse impacts from oil, gas, and mining projects should have the opportunity to access full information, participate meaningfully in impact assessment and negotiations, and give or withhold their consent to project development.

Extractive industry projects place intense pressure on land. Oxfam's view is that consent should be obtained by governments when land-use decisions are being made, including before the assignment of concessions and blocks, which occurs prior to a specific project being approved.

The benefits of FPIC flow both ways. Companies that obtain community consent and respect the community's rights insulate themselves from expensive conflicts that would threaten profits and in some cases make projects economically infeasible. In recent years, many businesses have seen projects crumble as communities have found the capacity and will to oppose and shut down operations. Mining and energy companies have lost millions of dollars invested into projects that have experienced clashes with local populations, to say nothing of the costly reputational hits these conflicts engender. A recent study found that a world-class mining project stands to lose approximately \$20 million per week in lost productivity as a result of production delays stemming from social conflict.² FPIC thus serves as an invaluable risk management tool for extractive companies. Ensuring that projects begin with free and fully informed community consent helps protect against the high cost of future tension and conflict.

FPIC is not simply good business: Embracing FPIC enables companies and states to avoid infringing on human rights. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in September 2007, establishes FPIC as a right for indigenous peoples and as necessary to ensure protection of their other self-determination-based rights. With regard to extractive industry projects in particular, UNDRIP calls on states to consult with indigenous peoples through their representative institutions to obtain their FPIC "prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources."³ Thus, states must ensure that indigenous peoples have the opportunity to approve or reject extractive industry projects that threaten their land and resources. The International Labour Organization (ILO) Convention No. 169 (ILO Convention 169) requires FPIC in cases of resettlement and calls on governments to consult with indigenous and tribal peoples prior to allowing exploration or exploitation of mineral or subsurface resources, with the objective of achieving agreement or consent.⁴ In addition, human rights bodies have interpreted treaties such as the International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, and International Convention on the Elimination of All Forms of Racial Discrimination as requiring indigenous peoples' FPIC in the context of extractive industry projects impacting on their rights.⁵

Unfortunately, most states have not incorporated FPIC into their national laws. However, the Philippines and Northern Territory of Australia offer notable exceptions. The *Indigenous Peoples Rights Act of 1997* in the Philippines requires FPIC, although implementation has been a challenge.⁶ In Australia, the *Aboriginal Land Rights (Northern Territory) Act of 1976* establishes special protections for traditional aboriginal

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owners, requiring project proponents to obtain the consent of land councils established to protect the interests of these owners.⁷ In addition, in Latin America, most countries have ratified ILO Convention 169 and assign constitutional rank to international human rights treaties. In Bolivia, UNDRIP has the rank of statutory law. In recent years Peru and Chile developed consultation regulations modelled after ILO Convention 169, and Colombia's Constitutional Court has issued jurisprudence requiring the halting of projects for lack of FPIC.⁸

Although states have the duty to protect against human rights abuses by third parties, companies likewise shoulder human rights responsibilities that touch upon land and natural-resource access. The UN Guiding Principles on Business and Human Rights call on corporations to respect human rights.⁹ For extractive companies, this means ensuring that its operations do not infringe upon local communities' rights to food, water, a healthy environment, housing, culture, and development. In the case of indigenous peoples, this means that businesses must respect the rights recognized in ILO Convention 169 and UNDRIP. Obtaining FPIC offers companies one way to minimize the risk that their operations will violate these human rights.



A warning sign, Sadiola Hill Gold Mine, western Mali; August 2006. Photo: Brett Eloff.

About this document

This policy brief examines publicly available policies regarding community rights and community engagement of 38 oil, gas, and mining companies. It aims to document and influence corporate policies and public statements regarding FPIC, and community engagement more broadly. As it is an update to the 2012 Community Consent Index, it not only allows comparison across the sector but also provides analysis of how policies and commitments have changed over time. Although relevant to projects like dams and large-scale agriculture, this document focuses on development projects in the oil, gas, and mining sectors in particular.

Oxfam views a comprehensive and publicly available policy framework as vital to promoting corporate accountability and respect for human rights. This applies not only to companies but also to governments, donors, and international financial institutions. Our attention to policies should not suggest that these are more important than the implementation of these commitments or the practice on the ground. Implementation is critical: done well, FPIC offers the potential for lasting agreements with indigenous peoples and local communities, whereas failure to implement FPIC can lead to human rights violations and costly project delays and stoppages. However, this report seeks to highlight changing trends in public commitments across the industry with the aim of increasing best practice across the sector.

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The report is intended to be of use for a number of different stakeholders. For civil society, the report can serve as an advocacy and engagement tool for their work in improving the social performance and policy of extractive companies and defending community rights. For companies, the report can assist in building trust amongst stakeholders and particularly affected communities, as well as to mitigate risks of social conflict and reputational damage. A secondary audience for this report includes government representatives, investors, academics, and media. The report can be used to better understand the positions and commitments of companies with regard to FPIC, human rights, community engagement, and gender.

This report evaluates public corporate commitments with relation to a spectrum of potential approaches to community engagement. The International Association for Public Participation’s spectrum of public participation begins with low-level, one-way participation (to inform) and ends with enabling the public to have final decision-making authority (to empower).¹⁰ Similarly, Oxfam has developed a spectrum of community engagement applicable to extractive industry projects which ranges from low (information sharing) to high levels (FPIC). Simply providing information to communities is not sufficient, and even processes of two-way consultation and dialogue fall short unless they enable communities to participate fully in making decisions about whether and how the project moves forward. Figure 2 depicts how Oxfam views the community engagement spectrum broadly. This report will describe how public corporate commitments fall along this spectrum.

Figure 2. Oxfam’s community engagement spectrum



Oxfam sees policies as important indicators of a company's commitments, which can usefully guide practice in the field. The United Nations Global Compact's "Business Reference Guide on the United Nations Declaration on the Rights of Indigenous Peoples" calls on companies to commit to obtain and maintain the FPIC of indigenous peoples for projects that affect their rights, and to adopt and implement a formal policy addressing indigenous peoples' rights. It provides several examples of the value of companies establishing formal policy commitments, such as publicly confirming the business commitment to meet its responsibility to respect indigenous peoples' rights, establishing consistent policy regardless of country-level staff turnover, helping to identify policy gaps and risks, building trust with external stakeholders, and providing reputational benefits.¹¹

Oxfam believes that policies should be public since transparency is critical to giving local communities a more meaningful role in decision making and control over their resources. Transparency also helps build trust between companies and communities and other external stakeholders, and provides a platform for stakeholders to hold the private sector more accountable.

Companies reviewed were selected based on a number of criteria and factors, including:

- Size: In terms of market capitalization, we include some small- and mid-tier companies for diversity but prioritize larger companies.
- Membership in industry associations, including the International Council on Mining and Metals (ICMM) and IPIECA, the global oil and gas industry association for environmental and social issues.
- Geographical representation: Oxfam looked for diversity in terms of the location of company headquarters and since 2012 expanded the scope of companies to include those from emerging markets—the report includes companies from Brazil and China.
- A mix of companies from the mining and oil and gas sectors.
- Relevance to countries and communities in which Oxfam has an extractive industry program or which have had engagement with Oxfam or Oxfam partners.

This method makes it impossible to speak statistically about the field, but the findings nonetheless provide a revealing snapshot.

Best practice would be for companies to develop robust policies consistent with international standards, with clear and public implementation guidance, endorsed by the highest level of the company. These should be broadly disseminated. For the purposes of this report, the authors reviewed published company policies and statements, websites, and annual reports and sustainability reports and recorded public commitments on the following issues: FPIC, indigenous peoples' rights, human rights, gender, and broader community engagement. Oxfam conducted desk research and interviews between June 2014 and April 2015.

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We contacted every company and invited them to discuss their FPIC or other community engagement policies with us. Companies interviewed and date of interview can be found in Annex B.

Prior to publication, Oxfam shared relevant draft findings with each of the companies that participated in the research to verify the information contained herein; the authors received feedback from 24 companies. If any pieces of information were overlooked, Oxfam welcomes feedback from companies or other stakeholders to supplement the information provided here. This policy briefing will be updated on a periodic basis.

Recent policy advances

In addition to international law obligations, recent policy advances reinforce the FPIC trend. For example, in 2012 the World Bank's private lending branch, the International Finance Corporation (IFC), updated its "Sustainability Framework" to require corporate loan recipients whose operations affect indigenous peoples to implement FPIC. The IFC also requires that borrower companies planning projects with a high risk of adverse impacts obtain broad community support from non-indigenous communities. Although not equivalent to FPIC, this should entail engaging in informed consultation and participation with local community members. IFC plays an important role as a standard setter for companies and banks, including 80 Equator Principle Financial Institutions¹² that have recognized the requirement for FPIC in their voluntary environmental and social standards, known as the Equator Principles.¹³

Mining company associations are likewise embracing FPIC. The International Council on Mining and Metals (ICMM) released its Indigenous Peoples and Mining Position Statement in May 2013, committing members to an FPIC process in which "indigenous peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognized human rights and is based on good faith negotiation."¹⁴ This position statement obligates member companies to begin integrating FPIC into their practices at more than 800 project sites worldwide. These commitments came into full effect in May 2015. Following a consultation with stakeholders in early 2015, ICMM will release guidance for companies to accompany the position statement. Another mining company association, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCME), calls on companies to "protect the rights for free, prior and informed consent of local communities including indigenous peoples."¹⁵

The multi-stakeholder group called the Initiative for Responsible Mining Assurance (IRMA), which includes mining companies and non-governmental organizations, is formulating a draft Standard for Responsible Mining that directs members to "initiate FPIC scoping" prior to any land disturbances and outlines minimum steps that mining companies must take to comply with this directive.¹⁶ The Kellogg Innovation Network: Mining Company of the Future process convened through Northwestern University's Kellogg School of Management included representatives of mining companies, contractors, suppliers,

researchers, academics, nonprofits, and indigenous peoples. In 2014, this multi-stakeholder initiative produced a Development Partner Framework, which included FPIC as a key recommendation.¹⁷

Oil and gas groups promote less progressive policies with regard to FPIC. IPIECA, the global oil and gas industry association for environmental and social issues, acknowledges the importance of constructive community consultation and advocates for “ongoing two-way communication about project impacts and benefits.” IPIECA released a compilation of best practices for companies engaging with indigenous peoples, which contains an overview of international standards and best practices related to FPIC. It also states on its website that it is currently conducting research on FPIC.¹⁸ However, IPIECA falls short of recommending specific policies or practices and does not bind members to IPIECA recommendations.

Other sectors outside of the extractive industry have also incorporated FPIC into company policies, further demonstrating that it has become the new benchmark of responsible business practice. Of the food and beverage “big 10,” all have now incorporated FPIC into their policies or commitments for at least one commodity.¹⁹ Some companies have gone further. Industry giants Coca-Cola and PepsiCo, for example, have committed to zero tolerance for land grabbing throughout their supply chains, which means that they will only work with suppliers and business partners to guarantee that they acquired land in accordance with FPIC.²⁰ Note that this commitment extends to projects affecting not only indigenous peoples but also non-indigenous communities. Following suit, Illovo, Bunge, Cargill, and Wilmar have also recently adopted public commitments to FPIC.²¹

Some multi-stakeholder initiatives outside the context of extractive industries also use FPIC terminology. The Forest Stewardship Council, Roundtable on Sustainable Palm Oil, and UN World Commission on Dams each call for FPIC in their requirements or recommendations.²² The first two extend the application of FPIC beyond indigenous peoples to all project-affected local communities.

Even the banking industry is getting on board: In 2014, two of Australia’s “Big 4” banks, Westpac and National Australia Bank (NAB), took important first steps on land grabbing in their new lending policies. NAB clearly stated its position on land acquisitions, and Westpac expressly recognized the right of local communities to provide or withhold their FPIC on any agribusiness land transactions.²³ In Canada, TD also commits to FPIC and claims to be “working to promote understanding of FPIC in the business community.”²⁴ FPIC is being embraced by extractive and non-extractive companies alike.

Regional institutions also call on states and companies to implement FPIC. In Africa, several regional institutions have called for FPIC processes when natural resource projects have the potential to affect local communities, regardless of whether affected communities identify themselves as indigenous peoples. Since 2009, the Economic Community of West African States, African Commission of Human and

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Peoples Rights, Pan-African Parliament, and Africa Mining Vision have all called on states to respect the FPIC of local communities that face potential impacts from mining, hydrocarbon development, or natural resource projects more broadly.²⁵ For the Americas, the Inter-American Court of Human Rights has issued findings calling on states to implement FPIC for projects with potentially significant impacts on indigenous peoples or groups which share similar economic, social, and cultural characteristics with indigenous peoples.²⁶

In Latin America and Asia, indigenous peoples and civil society organizations have for many years urged companies and governments to respect FPIC for indigenous peoples. Similar efforts have emerged in Africa in recent years but with broader application for FPIC than indigenous peoples. The 2013 Declaration of the African Coalition for Corporate Accountability, which includes 89 civil society organizations working on extractive industry and other issues from 28 countries across the African continent, calls for FPIC for every aspect of projects likely to affect communities.²⁷ The coalition does not limit FPIC to indigenous peoples.

FPIC is emerging as a best practice for safeguarding the human rights of all communities affected by extractive industry projects. It not only serves as a tool to protect indigenous peoples and local communities that stand to be affected by extractive operations, but it also is a financially savvy means of mitigating the risk that projects will run into costly conflict. Given its place under international law, FPIC must be respected by states and corporations alike. As we will describe in more detail below, Oxfam fears that growing adoption of policies may not be matched by practice. Crucially, more resources will be needed for verification and monitoring as companies move to implement their FPIC policies.

2 KEY FINDINGS

The following section presents an overview of the key findings from this research. For more information about the findings and for civil society resources on FPIC, please see our FPIC toolkit, available online at www.oxfam.org/communityconsent.

Company commitments to FPIC for indigenous peoples

This section examines extractive industry companies' public commitments to FPIC. At present, companies with FPIC commitments limit their application to projects that affect indigenous peoples.

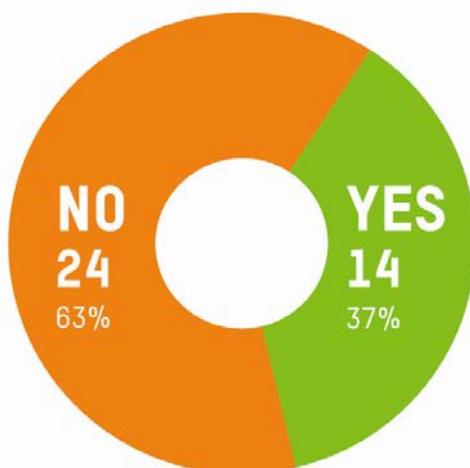
Fourteen companies have made public commitments to FPIC

The mining industry is growing increasingly accepting of FPIC for indigenous peoples. Since the 2012 version of this report, the number of extractive industry companies with public commitments to FPIC has increased from five to 14.²⁸ The way in which companies express their public commitments to FPIC varies, with some commitments included in human rights or community engagement policies and others included as brief mentions on websites or in sustainability reporting.

Eleven of the 14 companies with FPIC commitments belong to ICMM. In fact, of the 13 ICMM members surveyed, just two—AngloGold Ashanti and Areva—have yet to adopt an explicit FPIC policy commitment. In an interview with AngloGold Ashanti, the company said that it is updating its management standard on indigenous peoples to include a commitment to FPIC, in line with the ICMM position statement and updated IFC Performance Standard 7.²⁹

The list of companies with public FPIC commitments also includes mid-tier companies: Angkor Gold, PanAust,³⁰ and OceanaGold. This demonstrates that it is possible for smaller companies to commit to FPIC.

Figure 3. Corporate commitments to FPIC for projects affecting indigenous peoples



First Quantum Minerals, a Canadian mining company, does not have a public FPIC policy; however, it claims to have implemented an FPIC process to manage the resettlement of indigenous communities affected by their Cobre Panama mine, in Panama.³¹ Notably, a 2013 research report highlighted significant divergence between the perspectives of an indigenous leader and the company with regard to the nature of the consent-seeking process for this project.³² For projects affecting indigenous peoples, the company commits to “use reasonable efforts to respect their standing as distinct, self-determining peoples with collective rights.”³³

No companies have adopted a public commitment applying FPIC to all local communities (beyond indigenous peoples) affected by their projects. Angkor Gold stated that their FPIC commitment would not be limited to projects that affect indigenous communities,³⁴ but their policy is ambiguous on this point³⁵ and their mining activities currently overlap only with indigenous lands in Cambodia, so the wider application of their policy to non-indigenous communities remains untested. The introduction of the requirement to obtain indigenous peoples’ FPIC is a significant and welcome development that emerges from the recognition of indigenous peoples’ collective self-determination rights. However, Oxfam believes that the failure to address the relevance of FPIC with non-indigenous local communities whose rights are affected by extractive industry projects is a major gap in corporate policies and represents a missed opportunity for companies to build trust and facilitate shared decision making.

Table 1. Corporate commitments to FPIC for projects affecting indigenous peoples

Mining companies	Angkor Gold Anglo American Barrick Gold BHP Billiton Freeport-McMoRan Glencore ³⁶ Goldcorp Gold Fields MMG Newmont OceanaGold PanAust Rio Tinto Teck
Oil companies	

Existing corporate FPIC commitments provide little detail about how FPIC will be implemented in practice

The growing number of mining company commitments to FPIC provides an encouraging signal that industry has begun to acknowledge and prioritize FPIC. However, even with several early adopters of FPIC in principle, many companies still claim to be identifying how FPIC can be implemented. Across the board, the FPIC commitments we reviewed fail to provide significant detail regarding implementation. No companies offer unequivocal commitments to withdraw from a project if a community decides to withhold consent. Several companies seemed reluctant or unclear as to whether they will uphold the right to withhold consent.

Rio Tinto, an early adopter of FPIC, offers one exception in terms of transparency in that it makes public its guidelines for managers on agreement-making processes used in situations requiring community consent. However, on the issue of FPIC in particular, the guidance is somewhat ambivalent. On one hand, it states that the FPIC principle requires that development proposals only proceed “with the freely given consent of the affected communities.” On the other, it claims that it does not intend that its FPIC implementation “contradicts the right of sovereign governments to make decisions on resource exploitation.”³⁷ This language creates ambiguity around the question of whether a national government’s decision may trump that of the local community. This is contrary to the FPIC principle that allows for communities to withhold their consent. PanAust also couches its FPIC policy commitment with similar language about the sovereignty of national governments with regard to natural resource decisions.³⁸

In interviews conducted by the authors, several companies claimed that their commitments require them to work towards consent but not necessarily to respect a “no” decision from local communities. Barrick staff indicated that ICMM’s position statement requires it to “work toward” consent. They say that in some project contexts where communities’ opinions are divided, they may face “practical challenges” that could prevent them from securing full community consent. Nevertheless, Barrick says that it “strive[s] to ensure that decisions are made upon mutual agreement with local populations when they are impacted.”³⁹ Similarly, Freeport-McMoRan staff expressed sensitivity to the word “consent” and described FPIC as “effective stakeholder engagement,”⁴⁰ and Gold Fields staff emphasized that the final say regarding project development should go to the host government (following appropriate engagement with indigenous peoples and working toward obtaining their consent).⁴¹ BHP Billiton staff differed slightly from others in their response, agreeing that ultimately governments make mineral development decisions but adding that the company would be unlikely to proceed in the face of widespread opposition from indigenous landowners.⁴²

No policies offer unequivocal commitments to withdraw from a project if a community decides to withhold consent.

Box 2. FPIC policy implementation: Angkor Gold case study

A full review of company implementation of its FPIC policies falls outside the scope of this research. However, Oxfam in Cambodia conducted research to gather perspectives from a range of stakeholders on how Canadian mining junior Angkor Gold applies its stated policy commitments in practice and to better understand the challenges and opportunities related to FPIC implementation. The research revealed that the company has not yet achieved FPIC from project-affected indigenous communities. This is the case despite its stated commitment and the recognition of indigenous peoples' land and forestry rights in Cambodian law.

As of January 2015, the company website stated that the company implements FPIC in its engagement with indigenous peoples. It also reported that it achieved FPIC to build an access road within a project-affected community and continues to hold "FPIC meetings" in the communities. Although all four communities consulted by Oxfam reported having had some engagement with Angkor Gold, none of them expressed any awareness or familiarity of FPIC either as a concept or as a company policy. Levels of awareness and understanding of the information provided by the company varied considerably both across and within communities. The majority of community members interviewed reported that engagement by the company focused primarily on proposed community development projects—such as water pumps, tanks, upgrades to schools, etc.—rather than on decision making related to core mining operations and future plans. Most interviewees felt that they had inadequate information and feared that mining activities would continue without their consent using the protections of the government granted licenses.

This case highlights the risk of the gap between policy and practice. FPIC cannot be achieved without providing adequate information, ensuring all affected communities are able to access and understand that information, and providing affected community members the opportunity to deliberate, seek outside counsel, have a clear and reliable channel of communication to the company, and have the opportunity to give or withhold their consent for the project. Although the Community Consent Index focuses only on evaluating public corporate commitments, this case demonstrates that policy implementation is an ongoing challenge that requires further research and monitoring. Oxfam will continue to support research and monitoring in the countries where we work.

Sources: *Current Situation of Mining Industry in Cambodia*, published by the General Department of Mineral Resources (2013); Angkor Gold 2013 CSR Report, http://www.angkorgold.ca/wp-content/uploads/2014/06/SCD-Report-2013_WEB-final.pdf.



Glen Poch, 28, with her nephew in Taing Se, where the ethnic Jerai farmers are concerned that development may come in the form of mining by Angkor Gold. She says her village has the right to manage their communal lands. "I don't want anyone invading these lands." Photo by Patrick Brown/Panos for Oxfam America.

No oil and gas companies have made public commitments to FPIC

Oil and gas companies lag far behind their mining company peers in terms of public commitments to FPIC. In 2012 Canadian oil company Talisman Energy stood out among the crowd with a strong policy commitment to FPIC, but with its recent acquisition by Repsol, it remains to be seen whether and how its FPIC commitment will be incorporated. Repsol currently uses somewhat stronger language than other oil companies but falls short of an FPIC commitment. It commits to free, prior, and informed *consultation*, which Oxfam recognizes as being far from FPIC and more akin to standard consultation and dialogue processes. However, Repsol notes that consultation must be "in good faith and in a manner appropriate to the circumstances, in order to reach agreement or achieve consent in relation to the measures proposed."⁴³ Although several companies mentioned in interviews that they are assessing the issue of FPIC, no oil companies surveyed have public FPIC policies at present.

Some oil and gas companies claim that their practices align with the concept of FPIC. These include BG Group,⁴⁴ ConocoPhillips, and ExxonMobil. For example, ConocoPhillips staff states that the company's way of working is consistent with FPIC and noted that a discussion of FPIC will be a core IPIECA priority in 2015.⁴⁵ In addition, ConocoPhillips, ExxonMobil, and Total policies claim that their company approaches are consistent with ILO Convention 169 and UNDRIP.⁴⁶ ExxonMobil also claims that its policies are consistent with the IFC's performance standards and states that they participate in the IPIECA task force on FPIC.⁴⁷ However, these companies do not provide detail about how their approaches align with these international standards.

As with the mining sector, most companies we interviewed refrained from committing to respect the decision of a community to withhold consent, but responses varied somewhat. BG Group staff states that they prefer to avoid FPIC terminology because they see it as “controversial,” but that in fact BG Group “would not develop a project without community support” and “would never forcibly displace people.”⁴⁸ ExxonMobil staff explained that it undertakes community consultation with the aim of achieving consent but raised definitional difficulty in relation to the right to say no. Where agreement and consent cannot be obtained, ExxonMobil states that it adheres to the rule of law and attendant legal processes to determine a path forward.⁴⁹ Statoil claims to have internal requirements and guidelines which make specific reference to FPIC and the IFC’s performance standards.⁵⁰ When asked how they would respond to a community decision to withhold consent, they noted that they take into account the consent or approval of affected communities, for example fishing communities in an offshore project, when conducting seismic and other activities. At the same time, Statoil highlighted that the primary responsibility for managing communities lies with government.

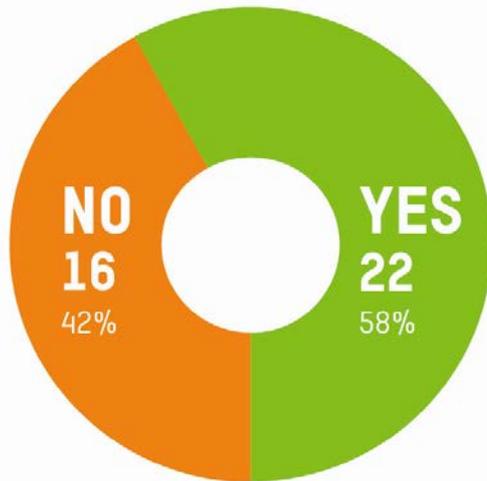
Company commitments on engagement with all project-affected communities

This section examines company public commitments to engagement with all project-affected communities. The review includes commitments that apply more broadly than to indigenous peoples.

Twenty-two companies commit to seeking the support or agreement of project-affected communities

Although oil, gas, and mining companies are reluctant to apply FPIC unless their projects will affect indigenous peoples, more than half of the companies in the sample make public commitments to seek the support or agreement of local communities, regardless of whether they identify as indigenous peoples. Some companies use the phrase “broad community support,” which generally refers to a collection of expressions by affected communities in support of a proposed project. The World Bank coined this term when it incorporated the standard in response to the World Bank’s Extractive Industry Review in 2004.⁵¹ Broad community support (BCS) represents a lower standard than FPIC, since it is generally interpreted by those seeking BCS as resting on an external determination of community support rather than on community processes. However, corporate commitments to seeking community support or agreement represent a considerable advance beyond more basic commitments to inform communities or even to consult them. In addition, this type of commitment represents a useful basis upon which companies might construct FPIC policies in the future.

Figure 4. Corporate commitments to seeking community support or agreement



Twenty-two companies (13 mining companies and 9 oil and gas companies) commit to seeking community support or agreement for their activities.⁵² Among these, language used by BHP Billiton and Rio Tinto stand out as somewhat stronger and clearer than others. BHP Billiton commits to “obtain and document broad-based community support for new operations or major capital projects before proceeding with development.” Rio Tinto also uses language of broad-based community support and states, “We seek to reach a specific agreement with each community on how it wants to engage with us in the development and performance of our operations, including how each community may express its support and concerns regarding our activities.”⁵³ Here Rio Tinto notes the importance of ensuring that communities have some influence on the company’s method of determining whether they have secured community support. In 2014, Oxfam researched the impact of resettlement on a community in Mozambique. Rio Tinto was the owner of the coal mine when most households (358) were resettled. Rio Tinto purchased the mine in Mozambique in 2011 and undertook the resettlement based on a government-approved resettlement action plan. Interviewees made it clear that they had little or no influence over decisions being made and did not support resettlement.⁵⁴

The findings regarding company references to support and agreement are consistent with those highlighted in recent research by Ethical Corporation.⁵⁵ Their survey of approximately 250 extractive industry professionals found that “95% of experts believe that social performance should move beyond risk mitigation and focus on generating active support from communities.” Survey respondents highlighted this issue as the second greatest challenge for corporate social responsibility in mining, oil, and gas (preceded only by the challenge of embedding social performance in business culture). Clearly companies are beginning to realize that community engagement must move beyond mere information and consultation in order to be meaningful and effective.

Table 2. Corporate commitments to seeking community support or agreement

Mining companies	Anglo American AngloGold Ashanti* Barrick BHP Billiton China Shenhua Energy First Quantum Minerals Glencore Gold Fields MMG Newcrest Newmont Rio Tinto Teck
Oil companies	Anadarko** BG Group BP Chevron* Eni* ExxonMobil Occidental PetroChina Statoil

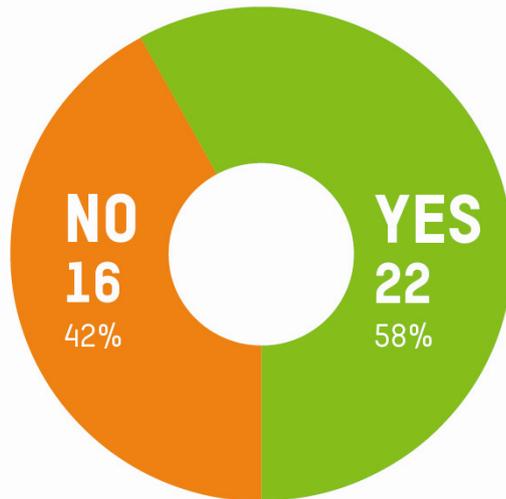
*Company commitment limited to circumstances where communities will be resettled.

**Company commitment limited to a particular project.

Twenty-two companies refer to a social license to operate within their public policies or statements.

Twenty-two companies—12 mining and 10 oil and gas—employ social license to operate terminology in their policies or public statements or both. Several companies also referred to this terminology in interviews. In fact, Ernst and Young's recent report on business risks in mining and metals includes "social license to operate" as the third of the top 10 risks for 2014, and number four among the top 10 risks over the past seven years.⁵⁶ Clearly, companies recognize significant potential risks to their operations when they fail to engage with communities effectively. However, the way in which companies use the "social license to operate" term varies considerably, creating a challenge for its application as a standard.

Figure 5. Companies that reference social license to operate



Some companies use “social license to operate” to refer to their process of engaging with project-affected communities and seeking their support for a project. However, other companies interpret the “social” in “social license to operate” to extend beyond project-affected communities to include stakeholders at the national or even international level. In an online video, ConocoPhillips Canada’s vice-president for environment and sustainable development states: “...how we produce oil and gas remains very important, and the ‘how’ refers to our environmental, our social, and our financial performance, and that affects our reputation. Our reputation in turn affects access to resource and access to markets and we refer to that as our ‘social license.’”⁵⁷ Here the term refers broadly to maintaining a good reputation as influenced by a number of stakeholders, rather than to the issues of community consent and respect for community rights.

The industry has yet to settle on a clear, shared understanding of the term “social license to operate.” Research on social license and mining produced by the University of Queensland found that “What is contained within the social license is poorly defined by industry. The parameters, substance and governance aspects of the terms are rarely, if ever, elaborated by proponents.”⁵⁸ Oxfam’s research for this report found that some companies use social license terminology to refer to community support, whereas others applied the term to a wider range of stakeholders than project-affected communities.

Eleven companies have yet to commit to either FPIC or to seeking community support or agreement from project-affected communities

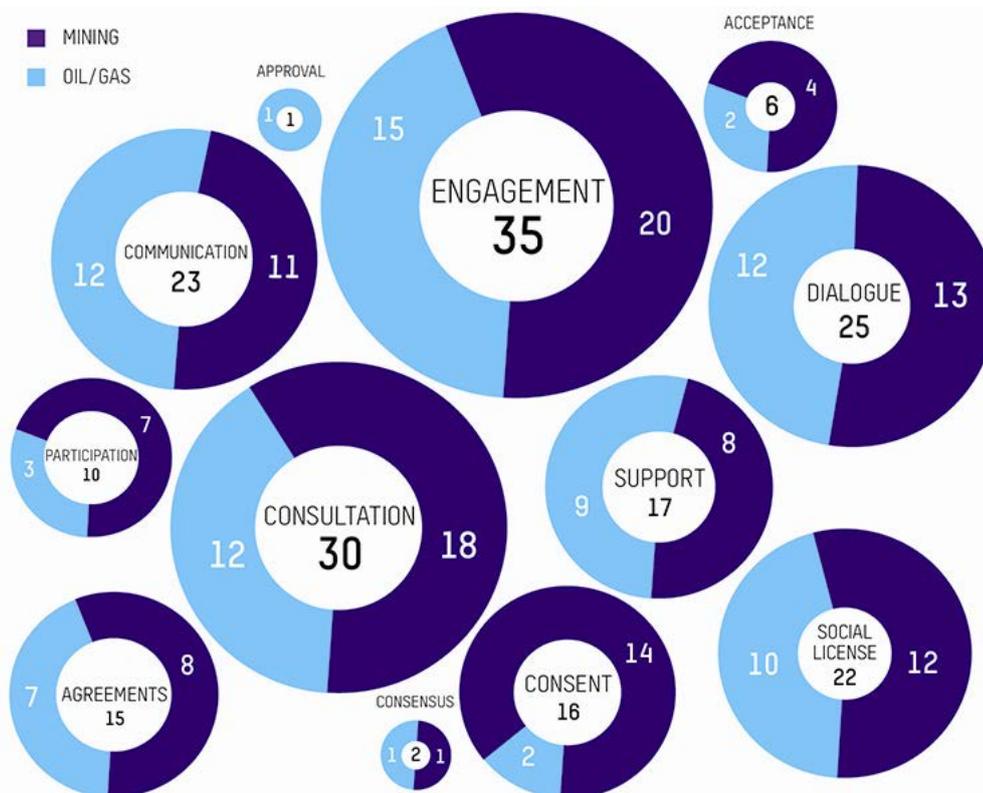
All companies included in this brief commit to some level of community consultation or dialogue in public statements regarding their relations with project-affected communities. This reflects broad and nearly ubiquitous recognition that community consultation is an integral aspect of successful and sustainable extractive operations. Twenty companies have a standalone community or community-relations policy.

All companies included in this brief commit to some level of community consultation or dialogue in their public statements regarding their relations to project-affected communities.

However, 11 companies have yet to incorporate either FPIC or community support or agreement into their policy commitments. These companies include: Areva, ConocoPhillips, CNOOC, Iamgold, Petrobras, Pluspetrol, Repsol, Shell, Total, Tullow, and Vale.⁵⁹

Figure 6 illustrates the range of terminology that companies in the sample use when describing their community-relations processes. Although engagement appears most frequently, note that a sizable group of companies refer to consent, support, or agreement. The majority of companies in the sample appear to have recognized that although community consultation is a necessary aspect of doing business, it is not sufficient.

Figure 6. Company usage of community-relations terminology



Broader human rights commitments

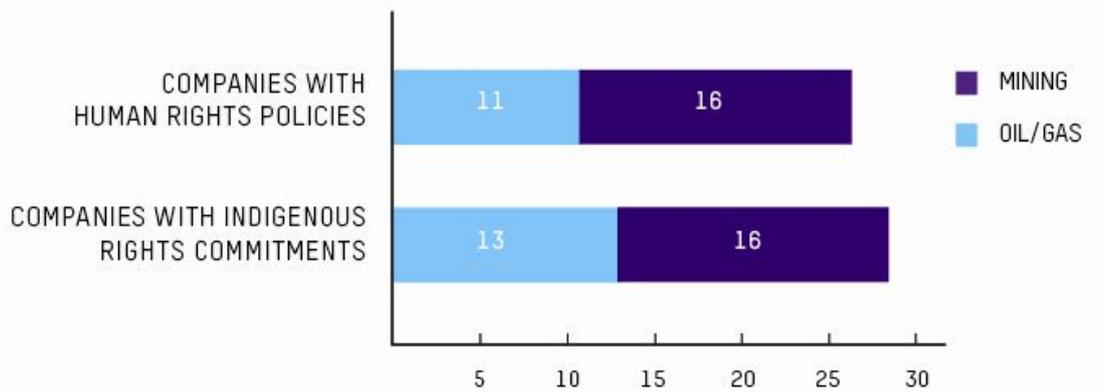
Twenty-seven companies have human rights policies, and 29 companies commit to respecting indigenous peoples' rights

Beyond recognition of FPIC, an increasing number of companies are developing human rights policies. Twenty-seven companies have public human rights policies (compared to 11 in Oxfam's 2012 Index), reflecting the widespread uptake of the UN Guiding Principles on Business and Human Rights. Introduced in June 2011, the Guiding Principles highlighted the need and specifications for a policy framework for the corporate responsibility to respect human rights. A number of companies in the 2012 Index have since released human rights policies, including Anglo American, AngloGold Ashanti, BHP Billiton, ConocoPhillips,

Repsol, Shell, and Statoil. Having a business-wide human rights policy is an important step in establishing a policy framework within which the recognition of FPIC can eventually be realized. Among the 11 companies in the sample that lack public human rights policies, 10 provide brief and general descriptions of the company’s approach to human rights⁶⁰ or make very limited reference to human rights, and one⁶¹ makes no reference to human rights in its public commitments.

Having a business-wide human rights policy is an important step in establishing a policy framework within which the recognition of FPIC can eventually be realized.

Figure 7. Corporate commitments and policies on rights



Twenty-nine companies included in the Index publicly commit to respecting indigenous peoples’ rights—ranging from a brief reference on the company website to a dedicated section in the company-wide code of conduct. Of the remaining nine companies, five⁶² make reference to respecting indigenous peoples’ cultures, and four⁶³ make no public commitment regarding indigenous peoples. An explicit commitment to indigenous peoples’ rights acknowledges the special circumstances, conditions, and worldview experienced by indigenous peoples and the need for particular protections of their collective rights, in addition to their human rights as individuals. Recognition of the rights of indigenous peoples should include the whole suite of indigenous rights as defined in international law, including the right to FPIC. Given that the requirement for indigenous peoples’ FPIC is derived from indigenous peoples’ collective rights and is necessary for their realization, it stands to reason that the first step in the process of developing and implementing a meaningful commitment to FPIC is to commit to respecting the human rights of indigenous peoples.



Indigenous Q'eq'chi village of La Paz, near Lake Izabal in eastern Guatemala. Village lies within a concession made to a nickel mine where the community faced the possibility of being relocated. Photo by Edgar Orellana.

Box 3. Human rights policy implementation: OceanaGold case

As we have noted, this report focuses on policy rather than practice. However, Oxfam would like to flag one example of company behavior that falls short of human rights policy requirements. OceanaGold explicitly commits to respecting host country laws and regulations in its July 2014 human rights policy. However, the company has failed to respect the sovereignty of the Salvadoran government regarding its involvement in the El Dorado mining project, in the department of Cabañas. El Salvador's government introduced a de facto moratorium on large-scale mining in the country in 2007, with support from mining-affected communities, civil society, and institutions like the Human Rights Ombudsman Office. However, OceanaGold is currently challenging the government of El Salvador at the World Bank's International Center for Settlement of Investment Disputes with a claim of approximately \$300 million. Mining company Pacific Rim brought the case to the tribunal after the government denied its mining application in light of non-compliance with requirements of the country's Mining Law. OceanaGold knowingly injected itself into the case with its purchase of Pacific Rim in 2013. At this report's writing, the decision on the case is pending. This legal action highlights the gap between OceanaGold's human rights policy and its practice, as well as the conditional nature of its support for El Salvador's sovereignty and right to make national development decisions.

Sources: OceanaGold Corporation, Human Rights Policy, <http://www.oceanagold.com/assets/documents/Governance/140630-OceanaGold-Human-Rights-Policy-July-2104.pdf>; Jillian Bunyan, "Environmental Regulation and Investor State Dispute Settlement Clauses" (November 17, 2014) <http://www.gtlaw-environmentalandenergy.com/2014/11/articles/environment/environmental-regulation-and-investor-state-dispute-settlement-clauses/>; International Allies Against Mining in El Salvador, "Debunking Eight Falsehoods by Pacific Rim Mining/OceanaGold in El Salvador" (March 2014) http://www.ips-dc.org/debunking_eight_falsehoods_by_pacific_rim_mining/.

Many companies refer to international treaties and standards that call for FPIC, even when they have failed to develop explicit FPIC commitments

Some companies that lack explicit FPIC commitments have committed to human rights treaties and instruments that require FPIC. For example, on the mining side, First Quantum Minerals makes reference to UNDRIP. Oil companies ConocoPhillips, ExxonMobil, and Total also make reference to UNDRIP in their policies. Just half of the eight companies that refer to UNDRIP in their policies also have public FPIC commitments,⁶⁴ even though FPIC is a central tenant of UNDRIP.

Eleven companies refer to ILO Convention 169 in their policies, five of which are oil companies. Twenty-one companies refer to the IFC's performance standards in their policies. Surprisingly, this group includes eight oil companies and three mining companies (AngloGold Ashanti, First Quantum Minerals, and Vale) that lack public FPIC commitments. The IFC performance standards include a clear requirement for FPIC for projects affecting indigenous peoples' lands and natural resources. In order to maintain policy coherence, all companies that refer to UNDRIP, ILO Convention 169, or the IFC's performance standards should incorporate an explicit commitment to FPIC in their policies. A commitment to respect indigenous peoples' rights by definition should imply a commitment to respect their decision-making processes and the outcome of those processes, in other words their right to give or withhold FPIC.

Table 3. Corporate references to international treaties and standards which call for FPIC

International standard	Relevant language	Company references
United Nations Declaration on the Rights of Indigenous Peoples	Calls on states to consult with indigenous peoples in order to secure their FPIC prior to the approval of projects affecting their lands or resources and in relation to “adopting and implementing legislative or administrative measures that may affect them”. ⁶⁵	Angkor Gold Anglo American ConocoPhillips ExxonMobil First Quantum Minerals MMG Rio Tinto Total
International Labour Organization Convention 169 on Indigenous and Tribal Peoples, 1989	Calls on states to consult with indigenous and tribal peoples for legislative and administrative measures which may affect them directly (including with regard to sub-surface natural resources), with the objective of achieving agreement or consent. Requires FPIC for relocation, and when not obtained stipulates that relocation must entail appropriate procedures established by law providing effective representation for affected peoples (Articles 6, 15, 16). ⁶⁶	Areva BG Group BHP Billiton** ConocoPhillips Eni Goldcorp Gold Fields Repsol Rio Tinto Teck Total
International Finance Corporation Performance Standards on Environmental and Social Sustainability	Requires clients to obtain the FPIC of affected communities of indigenous peoples when projects will generate adverse impacts on lands and natural resources subject to traditional ownership or under customary use, entail relocation of indigenous peoples from lands and natural resources subject to traditional ownership or under customary use, or may significantly impact critical cultural heritage. ⁶⁷	Anadarko Angkor Gold Anglo American AngloGold Ashanti BG Group BHP Billiton* Chevron* ExxonMobil First Quantum Minerals Glencore* Goldcorp* Gold Fields Iamgold Newmont* PanAust Pluspetrol Rio Tinto* Statoil* Total Tullow Vale

* Reference specific to resettlement.

** Limited to jurisdictions that have ratified the convention.

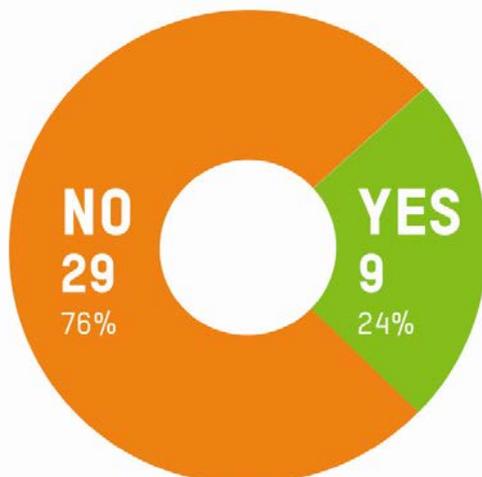
Company commitments regarding gender issues

The extractive industries affect women and men differently. Women are often at a particular disadvantage since they bear the brunt of the negative impacts while receiving few, if any, of the benefits (such as compensation for land or employment) and being excluded from decision-making processes. The negative impacts of oil, gas, and mining projects on women are too numerous to outline in this report and have been detailed elsewhere.⁶⁸ However, experience has shown that if extractive companies do not specifically consider their impacts on women's roles and responsibilities in the household and community, or their particular needs and interests, they can cause significant adverse effects. Women often face a number of institutional and societal barriers to participation and decision making in natural resource management.⁶⁹ Extractives companies that do not actively take these into account through their engagement strategies will most likely perpetuate these barriers and leave women at a further disadvantage.

Gender was not a strong focus for the majority of companies reviewed for this report. Of the 38 companies included, most had very little to no mention of gender (or the importance of engaging with women) in any of the publicly available policy documents or guidelines. The remaining nine companies (eight mining and one oil and gas) had some mention of gender with regard to community engagement in either their codes of conduct, community engagement or human rights policies, or sustainability reporting (see Table 4).

Of the 38 companies included, most had very little to no mention of gender (or the importance of engaging with women) in any of the publicly available policy documents or guidelines.

Figure 8. Corporate commitments related to gender in community engagement



In the policy documents we reviewed, companies expressed how they engage with women and gender issues in a number of different ways. Several companies stated in interviews that their community engagement guidelines address how to engage women in consultation and decision-making processes. However, the vast majority of these documents are not publicly available, so the strength of the guidelines cannot be assessed. A common claim across companies was that gender concerns are included in their broader commitments to engaging marginalized or

vulnerable groups. This is problematic not least because women make up half the population and are not necessarily a marginalized or vulnerable group. It also does not take into account the significant and specific attention that gender analysis requires in order to mitigate negative impacts and ensure equal participation.

Table 4. Corporate commitments related to gender in community engagement

Category	Companies
Stand-alone gender policy/guidelines	Rio Tinto
Policy documents provide specific details about how the company engages women and/or mitigates gender impacts	Angkor Gold (Limited detail) BHP Billiton PanAust
Policy documents include women with other marginalised groups	AngloGold Ashanti Anglo American Barrick Repsol Teck



Niama Makalu (22), with young Amidou Dembelle, tends to her crop next to a mine dump in Sadiola, western Mali; August 2006. Photo: Brett Eloff.

A few companies suggested their community development programs were beneficial to women, such as investment in local schools and healthcare. Although this may be true, the importance of women’s involvement in setting the priorities for these initiatives cannot be overstated. Research indicates that men and women often prioritize community investments differently, and frequently more sustainable development outcomes are achieved when women have an equal engagement with men in setting priorities for community investments.⁷⁰ A few companies mentioned workforce issues as the primary focus of their gender work.

3 CONCLUDING REMARKS AND RECOMMENDATIONS

This report suggests that extractive industry companies are increasingly seeing the relevance of FPIC to their operations. This includes more robust engagement with the concept and an increasing number of companies using the term. The number of companies with commitments to FPIC has almost tripled since 2012. Importantly, this list now also includes smaller, non-ICMM companies—a promising development that again highlights wider acceptance of FPIC within the industry. However, this trend masks a number of issues. First, the oil and gas sector is clearly lagging in adopting FPIC policies, with no public commitments from any of the companies included in this report. Second, although policy commitments to FPIC are increasing, these lack detailed implementation guidance, and some companies have reservations relating to the core right to withhold consent. Companies that use vague and hedging language with regard to FPIC risk abusing a concept that has been defined clearly by international bodies and law.

FPIC is a right of indigenous peoples that is enshrined in international law, and as a principle it also represents best practice in relation to community engagement with all project-affected communities. As we have noted, no companies reviewed for this report have made public commitments to uphold FPIC for non-indigenous project-affected people. However, community engagement is recognized as being crucially important for the sector, and the emergence of language around community “support” and “agreement” shows a general upward trend. Many company policies now require more than mere community consultation, and require companies to seek community support as well.

Unfortunately, there is very little consensus across the industry in terms of the language used in community support. Definitions of terms such as “broad community support” and “social license to operate” vary widely between companies. This is problematic on a number of fronts. Without clear commitments from companies to incorporate community input and respect community decisions, and clear and public guidelines on consultation process, it will be difficult for impacted communities to influence company plans, participate in decision-making processes, and negotiate benefit-sharing agreements. Furthermore, without a shared understanding of the meaning behind these community engagement concepts, the risk of conflict between and within communities is increased and corporate accountability is weakened.

There are a number of considerations arising from this report that need additional focus to ensure the extractive industries mitigate risks to project-affected communities. First, in an industry that is characterized by frequent mergers and acquisitions, it is important to consider issues relating to legacy commitments and responsibility post-transfer. This has implications at a policy level, as highlighted in the above example of

Talisman Energy and Repsol. Shell's recent purchase of BG Group offers another example that may have considerable policy implications in the countries where BG Group operates. However, more importantly, it has practical implications in terms of the impacts of an acquisition on a community. Here it is important to note that FPIC is not a static process and requires ongoing commitment and effort at all phases of the project lifecycle, including on the part of the company taking over the project.

Second, as this report outlines, gender considerations at a policy level are weak across the board. Mitigating the specific impacts of extractive industry projects on women, as well as ensuring equal benefit and involvement in decision making, requires concerted and comprehensive attention. Without a clear and overarching commitment to gender, companies risk contributing to or deepening existing gender inequalities. These commitments should be publicly available so that there is clear accountability in relation to the gender impacts of mining operations. Ensuring that gender concerns are built in to all levels of business will lead to both more positive sustainability outcomes, as well as reduce risks to businesses resulting from negative impacts on communities. A company gender policy should commit the company to respect the rights of both women and men, provide equal opportunity and equal access to any benefits incurred by the project for both women and men, and involve both women and men in consultation and decision-making processes.

Based on the findings of this report, we suggest that stakeholders look at strengthening their policy commitments relating to FPIC and community engagement in the following ways:

To extractive industry companies:

- Adopt an explicit and unambiguous policy commitment to FPIC and develop detailed accompanying implementation guidelines, making these publicly available.
- Conduct thorough monitoring and evaluation of FPIC processes being implemented and disclose information publicly in a language and form understood by the community while these processes are underway.
- Develop clear and overarching commitments to gender that respect the rights of both women and men, provide equal opportunity and equal access to mining benefits for both women and men, and involve both women and men in consultation and decision-making processes.
- Conduct project-level gender impact assessments to better understand how operations may affect women and men, avoid potential negative impacts, and enable mining projects to be more responsive to women and men's needs and interests.
- Adopt a public human rights policy in alignment with the UN Guiding Principles on Business and Human Rights, as well as an indigenous peoples' policy committing the company to respect indigenous peoples' rights.
- Guarantee the durability of FPIC practices after mergers and acquisitions and respect legacy commitments and responsibility post-transfer.

- In keeping with the independent corporate responsibility to respect human rights, avoid the temptation to hide behind inadequate government legislation and practices in relation to indigenous peoples' rights and instead encourage governments to ensure that FPIC processes are conducted at the earliest stages of land- and resource-use planning and prior to the issuance of concessions or contracts.
- Disclose adequate information to facilitate community decision-making processes and project monitoring, including but not limited to all contracts signed with host governments; environmental impact assessment documents, as well as succinct summaries of these documents in communities' preferred languages; and all company payments to host governments.

To IPIECA:

- In line with industry best practice and in consultation with indigenous peoples, develop specific guidance for the oil and gas sector regarding FPIC and monitor implementation among members.

To ICMM:

- Review member commitments relating to FPIC and establish an accountability system to monitor how member companies are implementing these commitments.
- Encourage members to expand the application of their FPIC policies beyond projects that affect indigenous peoples to projects with potential adverse impacts on any local community.
- Regard its indigenous peoples and mining position statement as a living document and initiate a consultative process with indigenous peoples to assess its implementation and review and revise its content, in particular in relation to the rights-based expectations of indigenous peoples with regard to ICMM member company responsibilities in contexts where FPIC is not forthcoming.

To governments:

- States should adopt legislation that enshrines the FPIC principle for oil, gas, and mining development. They should consult communities and seek their FPIC prior to the award of oil blocks or mining concessions.
- All countries with indigenous peoples within their borders, and countries whose companies affect indigenous peoples overseas, should ensure that the UNDRIP is fully implemented by adopting the appropriate legislative, administrative, and policy frameworks to guarantee respect for indigenous peoples rights and implementation of FPIC in the context of extractive industry activities.
- States should develop national action plans on business and human rights and ensure that these call for FPIC and make reference to UNDRIP and ILO Convention 169. This is particularly relevant for the governments of countries that are home to extractive sector multinationals.

ANNEXES

A. Summary table: Public corporate commitments

Company	Public commitments				Public policies		Public references to treaties/standards		
	FPIC	Community support/ agreement	Indigenous rights	Gender and communities	Human rights policy	Community relations policy	UN Declaration on the Rights of Indigenous Peoples	ILO Convention 169	IFC Performance Standards
Anadarko		✓							✓
Angkor Gold	✓		✓	✓		✓	✓		✓
Anglo American	✓	✓	✓	✓	✓	✓	✓		✓
AngloGold Ashanti		✓	✓	✓	✓	✓			✓
Areva			✓					✓	
Barrick	✓	✓	✓	✓	✓	✓			
BG Group		✓	✓		✓	✓		✓	✓
BHP Billiton	✓	✓	✓	✓	✓	✓		✓	✓
BP		✓	✓		✓				
Chevron		✓	✓		✓				✓
China Shenhua Energy		✓							
CNOOC									
ConocoPhillips			✓		✓	✓	✓	✓	
Eni		✓	✓		✓	✓		✓	
ExxonMobil		✓	✓		✓		✓		✓
First Quantum Minerals		✓	✓		✓	✓	✓		✓
Freeport-McMoRan	✓				✓	✓			

Company	Public commitments				Public policies		Public references to treaties/standards		
	FPIC	Community support/ agreement	Indigenous rights	Gender and communities	Human rights policy	Community relations policy	UN Declaration on the Rights of Indigenous Peoples	ILO Convention 169	IFC Performance Standards
Glencore	✓	✓	✓		✓	✓			✓
Goldcorps	✓		✓		✓	✓		✓	✓
Gold Fields	✓	✓	✓		✓	✓		✓	✓
IAMGOLD			✓		✓				✓
MMG	✓	✓	✓				✓		
Newcrest		✓			✓	✓			
Newmont	✓	✓	✓		✓	✓			✓
Occidental		✓			✓	✓			
OceanaGold	✓		✓		✓	✓			
PanAust	✓			✓		✓			✓
Petrobras									
PetroChina		✓							
Pluspetrol			✓						✓
Repsol			✓	✓		✓		✓	
Rio Tinto	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shell			✓		✓				
Statoil		✓	✓		✓				✓
Teck	✓	✓	✓	✓	✓			✓	
Total			✓		✓		✓	✓	✓
Tullow			✓		✓				✓
Vale			✓		✓				✓

B. Oxfam interviews with companies

Company	Interview Date
Anadarko	July 9, 2014
Angkor Gold	July 10, 2014
Anglo American	July 11, 2014
AngloGold Ashanti	April 7, 2015
Barrick	July 11, 2014
BG Group	July 17, 2014
BHP Billiton	October 1, 2014
BP	July 23, 2014
ConocoPhillips	December 18, 2014
Eni	April 15, 2015
ExxonMobil	September 19, 2014
Freeport-McMoRan	July 16, 2014
Glencore	December 8, 2014
Goldcorps	November 26, 2014
Gold Fields	November 18, 2014
IAMGOLD	February 26, 2015
MMG	November 3, 2014
Newcrest	November 21, 2014
Newmont	June 26, 2014
Occidental	July 17, 2014
OceanaGold	October 17, 2014
PanAust	October 30, 2014
Petrobras	August 4, 2014
Pluspetrol	July 28, 2014
Repsol	April 30, 2015
Statoil	January 7, 2015
Teck	August 20, 2014
Total	December 11, 2014
Vale	August 29, 2014

NOTES

All URLs in this section were last accessed June 2015.

- ¹ The final report of the World Bank Group's 2004 Extractive Industries review, which examined the question of whether extractive industries can be compatible with sustainable development and poverty reduction, included company implementation of FPIC for local communities among its key recommendations to ensure that communities benefit from extractive industry projects. (See Emil Salim, 2003. "Striking a Better Balance: The Final Report of the Extractive industries Review." Volume I, <http://commdev.org/striking-better-balance-final-report-extractive-industries-review>).
- ² Rachel Davis and Daniel M. Franks. "Costs of Company-Community Conflict in the Extractive Sector." Corporate Social Responsibility Initiative Report No. 66 (Cambridge, MA: Harvard Kennedy School, 2014), http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf.
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