

TOOL 13

Steps towards consensus

Unlike voting procedures to reach one decision from a choice of many options, consensus processes require a harmonization of various possible decisions to reach an outcome that could be most agreeable to the greatest number of parties.

Voting is generally not a preferred method for indigenous communities, and hence a referendum process should only be used in cases where a long process of consensus-building has already taken place, and a formalization of consent is demanded either by regulators or community leaders. This was the case with the Voisey's Bay agreement between Inco (now Vale) and the indigenous communities in Labrador, Canada. The consensus-building process continued for eight years after which a referendum vote was held and resulted in an 82 per cent approval by the Inuit community and a 76 per cent approval by the Innu, who had previously opposed the mine by a wide majority.⁵³

The MIT-Harvard Public Disputes Program and the Consensus Building Institute have refined a series of steps that are particularly appropriate for engagement with Indigenous Peoples, and should be considered as part of their "mutual gains approach" to developing consensus. The approach they take in even organizing meetings is different from the conventional Western approach of using "Robert's Rules" (which date back to 1876).

This tool provides practical guidance (five key steps) for companies wanting to foster a consensus-building

approach when engaging and making decisions with indigenous communities.⁵⁴ The tool may be helpful in cases where companies are unable to obtain consent from indigenous communities, or when communities are divided about whether a project should proceed. It is important to note in the steps that follow, that while companies do have a role in fostering a consensus-building approach, for example by bringing in an independent facilitator, they should take care to not interfere in Indigenous Peoples' decision-making processes. Their role is to ensure that Indigenous Peoples fully understand all aspects of the project, including its design, impacts, risks and benefits, and allow the community to make its own decision.

STEP 1 Convening

Identifying parties to convene a consensus process requires companies to undertake initial scoping interviews, which could be undertaken in concert with an independent "conflict assessment" (undertaken at the same stage as a baseline data-gathering exercise noted in Chapter 2). All participants should agree on the make-up of the group involved in the negotiations, and try to identify missing tribal members whose absence may affect the credibility of a consensus-building process. Attendees (further to invitations from the convening entity) should collectively note ways of identifying appropriate individuals to add to the group.

The choice of a mediating or facilitating entity that is perceived as neutral to the outcome, but an advocate for fair processes and procedures, is essential at this stage.

⁵³ I Pain and T Paddon, Negotiating agreements: indigenous and company experiences: presentation of the Voisey's Bay case study from Canada, International seminar on natural resource companies, Indigenous Peoples and human rights: setting a framework for consultation, benefit-sharing and dispute resolution, Moscow, 3-4 December 2008.

⁵⁴ L Susskind, An alternative to Robert's Rules of Order for groups, organizations, and ad hoc assemblies that want to operate by consensus, in L Susskind, S McKernan and J Thomas-Larmer (eds), *The consensus building handbook: a comprehensive guide to reaching agreement*, Thousand Oaks, CA, Sage Publications, 1999.

