

INTERNATIONAL ACCOUNTABILITY PROJECT

**International Accountability Project's Submission to
the United Nations Office of the High Commissioner for Human Rights'
Baseline Study on Human Rights Impacts of Mega-Infrastructure Investments
March 24, 2017**

International Accountability Project (“IAP”) appreciates the opportunity to provide comments to the United Nations Office of the High Commissioner for Human Rights’ *Baseline Study on Human Rights Impacts of Mega-Infrastructure Investments* (the “Baseline Study”).

IAP is a human rights organization that believes development should be based on community priorities. We support community-led development and reinforce campaigns against projects communities do not want. IAP’s approach puts communities and their priorities first, and strives to generate shifts in the development paradigm by keeping the following question at the center of its work: What if development was designed and lived by the same people?

Among IAP’s initiatives relevant to the Baseline Study, the *Early Warning System* monitors proposed projects at development financiers, alerts communities likely to be impacted and, with partners, reinforces community-led responses ideally before funding is determined. Throughout, IAP works with community organizers to use community-led research to influence projects as well as development policy and practice. IAP hopes to be of assistance by bringing this background to our comments on the Baseline Study.

In the words of Commissioner Zeid, “...it is time to re-imagine infrastructure as if people and the environment mattered.”¹ Unfortunately, as this Baseline Study clearly demonstrates, this is not the direction the G20 and their master plans are headed. While mega-infrastructure projects have a documented history of failing to deliver a positive risk-adjusted return, to date, the G20’s master plans have not proposed consequential changes in design or approach to make these projects socially and environmentally viable.

¹ Zeid Ra’ad Al Hussein, Human rights trampled in push to build infrastructure. Miami Herald, March 7, 2017.

Development should benefit the poorest and most vulnerable communities. Yet time and time again, it is precisely these communities which disproportionately bear the environmental and human rights impacts, often without sharing in the benefits. There are a wide range of reasons why the current infrastructure development model does not work, including the inadequate identification and mitigation of human rights and environmental risks, and increasingly targeted reprisals against those who speak out against projects.

From IAP's perspective, infrastructure blueprints cannot be successful so long as affected communities are precluded from being active participants in the design of development projects and their recourse mechanisms.

The Baseline Study provides a prime opportunity to bring these concerns to the fore, and promote achieving the Sustainable Development Goals (SDGs) in a manner that prioritizes the input, partnership, and well-being of the communities present at all levels of impact. IAP believes that proper compliance with communities' rights of access to information and meaningful consultation would serve to prevent impacts described in the study, and transfer the priorities of these mega-projects from economic profits to real social development.

IAP's contributions are divided into 4 sections. The first section shows the necessity of utilizing community priorities as the basis for the conception of infrastructure plans if true development is to be pursued; the second section outlines the current lack of compliance with the rights of access to information and meaningful consultation in the context of national and regional infrastructure plans; the third section discusses the possibilities of preventing or limiting impacts if these rights are complied with; and section four offers additional points to consider for the Baseline Study.

I - True Development

*For true development to occur, the journey must start from within the communities themselves.*² Recently, IAP and its partners conducted a study surveying 800 participants in 8 countries around the globe who had been affected by development projects. Strikingly, 82% of the respondents made clear that their development priorities were different from the

² See John Mwebe. 'The development journey of a community starts from within' – the remarkable potential of community mapping. November 7, 2016. Available at <https://medium.com/@accountability/the-development-journey-of-a-community-starts-from-within-the-remarkable-potential-of-community-1adc839838af#.iz9s5fnjs>

priorities of their governments.³ The statistics collected clearly demonstrate that national and regional plans for projects largely do not correspond to the priorities of those most affected by them. Overwhelmingly, people on the ground are excluded from the undemocratic decision processes which establish priorities and decide impacts. The result is that only 10% of those surveyed believed the projects would benefit their communities, and only 14% believed projects would benefit the country population.⁴

The SDGs have been proposed as goals to “end poverty, protect the planet, and ensure prosperity for all.”⁵ Given the failures of mega-infrastructure projects in the past in enhancing and nurturing social well-being, the Baseline Study should emphasize the need for the G20 countries to make changes that meaningfully incorporate the development priorities of the population at large, and most importantly, of any affected communities, in order to achieve true development.

II - The Importance of Access to Information and Meaningful Consultation

Access to information is a human right clearly recognized in a number of national legislations, regional conventions and, most prominently, by article 19 of the International Covenant on Civil Political Rights.⁶ As such, it is a right to be respected by public and private entities alike, and is a prerequisite for meaningful consultation processes, and to sustainable and inclusive development.

The conclusions produced from IAP’s study clearly outline that community priorities on development must be first taken into account within the project design for these goals to be achieved. As affirmed by Commissioner Zeid, “no major infrastructure project should be financed without thorough public deliberation and consultation with the communities directly affected.” Simply put, people should be able to shape the decisions that affect their lives.

However, data from IAP’s study shows that this sort of engagement is far from being the rule. 84% of the more than 800 people that participated in the study affirmed that they did not have access to the necessary information to offer an informed opinion about projects

³ Global Advocacy Team (GAT) report. IAP, p. 81. Available at bit.ly/whatdevelopmentcouldbe

⁴ Idem. P. 83.

⁵ <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

⁶ UN OHCHR study page 11.

affecting their communities.⁷ 64% of the respondents did not even know where they could obtain this information.⁸

These numbers correspond to the transparency barriers and lack of access to information available for communities directly impacted by individual development projects. In the context of master plans encompassing a group of mega-projects, these numbers are much higher. IAP's research shows that 88% of the people surveyed in the report mentioned above were not consulted during the planning phase of projects affecting their communities.⁹ 94% of the people responded that they were never consulted about their priorities for regional or national development plans.¹⁰

It is also relevant to note that many of these transformational plans involve an array of financiers, both private and public, that remain unknown to local communities, along with the standards applicable to each project component. The burden on communities to have access to necessary information is sometimes even further increased by the fragile and conflict affected context of the states where these projects are pursued.

Evidently, without access to information, people cannot be properly consulted about projects affecting their lives, and are unable to play their part in shaping development. However, the gravity of this point must be emphasized more in the Baseline Study. While the Study does comment that, "the plans missed an opportunity to improve project design through user input and to gain the public's trust and endorsement," IAP recommends that the language around access to information and consultation be strengthened to reflect the harmful ramifications of failing to uphold these rights.¹¹ By detailing examples of cases where communities were not provided with access to free, prior and informed consultation, and the subsequent impacts, the Baseline study can better emphasize the importance of these rights, and their visible impacts.¹²

⁷ See GAT report p. 82.

⁸ Idem.

⁹ Idem. P. 84.

¹⁰ Idem.

¹¹ OHCHR Baseline Study p.11

¹² See International Rivers, "Infrastructure for Whom?": A Critique of the Infrastructure Strategies of the Group of 20 and the World Bank", https://www.internationalrivers.org/sites/default/files/attached-files/infrastructure_for_whom_report.pdf

III - Prevention of impacts

Based on our work with communities worldwide, IAP believes that if properly actively and reactively provided,¹³ access to information and proper consultation processes about master plans and individual projects could substantially bring positive changes to people's lives and mitigate negative impacts from occurring.

III.a Local Impacts

*Communities are best placed to advise on and prevent potential impacts of projects affecting their lives.*¹⁴ Attesting to this is the fact that 65% of the people surveyed by IAP's study believed that projects affecting their communities could have been modified to achieve the same goals while causing less damages.¹⁵ Proper consultation processes that provide accessible, adequate and timely information, while offering a safe environment for people to ask questions and express their opinions, freely are of essence for such an outcome.¹⁶

As already mentioned, most people do not receive the necessary information to externalize an informed opinion about infrastructure projects. Also relevant is the fact that 78% of the people surveyed by IAP's study affirmed they did not feel safe to ask questions and express their true opinions about projects.¹⁷

Not only are information and a safe environment not being provided, but the consultations that do take place also lack good faith, attesting to their irregularity. For consultations to be properly conducted, a dialogue with affected communities must take place throughout the lifecycle of a given project, and negotiations must have a mutual agreement as their goal.¹⁸ In other words, good faith consultations cannot be informational sessions about decisions already taken.¹⁹ 85% of the people surveyed by IAP did not believe that their opinions and ideas were incorporated in project plans they were consulted upon.²⁰

¹³ On active and reactive promotion of access to information, see Global Transparency Initiative (GTI doc). Model World Bank Policy on Disclosure of Information. May, 2009. Available at http://www.ifitransparency.org/uploads/7f12423bd48c10f788a1abf37ccfae2b/GTI_WB_Model_Policy_final.pdf. Pp. 1-2.

¹⁴ See GAT report. P. 7.

¹⁵ See *idem*. P. 83.

¹⁶ See GTI doc. *Supra*. P. 1.

¹⁷ See GAT report. P. 82.

¹⁸ See Inter-American Commission on Human Rights (IACHR). Derechos de los pueblos indígenas y tribales sobre sus tierras ancestrales y recursos naturales. Organisation of the American States (OAS), December 30, 2009. OEA/Ser.L/V/II. Doc. 56/09. p. 112.

¹⁹ See IACHR. Acceso a la justicia e inclusión social: el camino hacia el fortalecimiento de la democracia de Bolivia. OAS, June 28, 2007. OEA/Ser.L/V/II, Doc. 34, para 248.

²⁰ See GAT report. P. 84.

Micro level impacts in the projects planning, construction and operational phases could be prevented, or promptly redressed, if discussed with those affected via a proper consultation process. Technical solutions and innovative designs, proposed by those that know their territory and their partners, can avoid damage and respond to local priorities.²¹

For Indigenous and tribal peoples, specific cultural attachments to territories must be reflected in considerations about infrastructure plans. Although infrastructure and related connectivity efforts might be considered of relevance for the realization of certain human rights,²² it is important to consider and respect Indigenous and tribal communities' points of view and knowledge. Respecting the Indigenous right to consent can prevent damages that might affect the integrity of their lands and natural resources,²³ and avoid imposing unwanted cultural paradigms as in the case of Indigenous peoples in voluntary isolation.²⁴

While the OHCHR study touches upon the points mentioned above, the link between access to information and consultation with the prevention and mitigation of adverse environmental and human rights impacts must be made stronger. In particular, free, prior and informed consultation should be emphasized in the "Planning Phase" of the micro-level impacts as an important preventive measure, and a method through which communities can shape development priorities, so the existing master plans avoid the mistakes of the past.

Additionally, the rapidly closing space for civil society to voice their priorities and concerns must be acknowledged within the Baseline Study. Large-scale development regularly becomes the epicenter within zones of human and environmental abuses. It is unfortunately not enough to simply recommend safe spaces be created for individuals and communities to speak; attention must be drawn to the need for governments and financiers to proactively prevent reprisals against human rights and environmental defenders.

²¹ See *idem*. P. 83.

²² See Zeid Ra'ad Al Hussein. Miami Herald, *supra*.

²³ See Inter-American Court of Human Rights. *Pueblo Saramaka v. Suriname*. Excepciones preliminares, fondo, reparaciones y costas. Judgement of November 28, 2007. Serie C n 172, párras 134-136.

²⁴ In this respect, see IACHR. *Indigenous peoples in voluntary isolation and initial contact in the Americas*. OAS, December 30, 2013. OEA/Ser.L/V/II. Pp. 12-14.

III.b Wider Impacts

The proactive and reactive release of information, coupled with good faith engagements with affected communities and the population at large also assists in the prevention of the wider impacts described in the UN OHCHR study.²⁵

As stated by Mendel, only by properly providing information can the pillars of democracy be sustained, with governments attending to the will of the people.²⁶ Public access to information and engagement is essential for holding governments to account and would prevent project plans' departure from a discriminatory point of view - that is, disregarding the expectations and needs of vulnerable and marginalised groups, as mentioned by the OHCHR Baseline Study.²⁷ Moreover, as a vital tool for public engagement, detailed information about national and regional master plans and their specific projects would serve to expose the danger of corruption and mismanagement early on.²⁸

IV - Points to Consider within the Baseline Study

- ❖ Recommend that regional, national and project specific plans be based on community-led research and mapping exercises, bringing together community members, civil society, and government officials to understand the social, economic and political issues undergirding the places these communities live, and the best means to address them.²⁹ Examples of these exercises abound and should be implemented so national and regional plans can take the format of true development endeavours.³⁰

- ❖ Urge governments and development financiers to integrate or stimulate community-led development research when creating national and regional master plans.

²⁵ In this sense, see GTI Doc. Supra. Pp. 1-2.

²⁶ Toby Mendel, Freedom of information as an internationally protected human right. Article 19, available at <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>.

²⁷ See OHCHR Baseline Study p. 22.

²⁸ See Mendel. Op. Cit. Supra. Also, GTI doc. Pp. 1-2.

²⁹ See idem.

³⁰ See, e.g., the Popular Plan of Vila Autódromo in Brazil at

<https://comitepopulario.files.wordpress.com/2012/08/planopopularvilaautodromo.pdf>; the Dandara Community Project also in Brazil at

https://drive.google.com/file/d/0B1k_PB7xrQxiZTlmNDM1ODEtOTYzYi00OTU5LTlmN2EtZDQyODQzMzUyOGUz/vie w; and the community-led development model adopted by the Masiwe village in Uganda at

<https://medium.com/@accountability/change-through-collective-action-a-model-for-community-led-development-fromuganda-cb9b9e78fec9#.mgj4i9bhz>.

- ❖ Confirm that master plans need to be constructed, from their inception, with the engagement of and in accordance with the development priorities of those affected by projects.
- ❖ Recognize that research to understand the dimensions of current and future master plans needs to involve those directly affected by projects, which are best placed to determine possible impacts to their lives and territories.
- ❖ Call for the establishment of Regional Engagement Units where local communities can communicate and exchange knowledge about their priorities and preoccupations regarding regional master plans affecting their lives and territories, and that information stemming from this exercise is shared for public knowledge and discussion in a timely and accessible manner.
- ❖ Highlight the prominence of access to information and consultation as rights which, when properly complied with, can be instrumental in delivering improved lives and livelihoods for all those connected to the project while preventing harmful impacts.
- ❖ Emphasize examples of previous projects where a lack of access to information, meaningful consultation and community engagement resulted in harmful impacts.
- ❖ Include examples of community responses to and mobilization around past and current master plans and individual development projects within master plans. Please review the Annex included for examples.
- ❖ Denounce the current climate of violence and repression faced by human rights and environmental defenders who attempts mobilize, access and provide information and voice their priorities and concerns about development projects.

Annex: References to Groups Resisting National/Regional Master Plans

- **China-Pakistan Economic Corridor (CPEC)**
 - Activism and forced evictions in Pakistan: <http://www.latimes.com/world/asia/la-fg-pakistan-china-snap-story.html>
 - Resistance by the World Sindhi Congress: <http://www.worldsindhicongress.org/2017/02/balochistan-minorities-protest-forceful-implementation-of-cpec/>
 - Resistance by Balochi Activists: <http://unpo.org/article/19885>

- **India Corridors**
 - There has been a lot of activism around the Delhi-Mumbai Industrial Corridor. Organizations which have come together in solidarity include:
 - Corridor Virodhi Sangharsh Abhiyan
 - National Alliance of Peoples' Movements
 - Narmada Bachao Andolan
 - Paryavaran Suraksha Samiti
 - Sarvahara Jan Andolan
 - ICAN
 - INSA
 - Ghar Bachao Ghar Banao Andolan
 - Gujarat Khedut Samaj
 - Jagatikaran Virodhi Kruti Samiti
 - Gujarat Sarvodya Mandal
 - Kisan Sangharsh Samiti
 - Jan Sangharsh Vahini
 - Indian Community Activist Network
 - Mines, Minerals and People
 - Delhi Solidarity Group
 - <https://ejatlas.org/conflict/delhi-mumbai-industrial-corridor>
 - <http://www.landconflictwatch.org/node/44>
 - Press release regarding the resistance to the “corporate corridorization” of India: <http://www.indiaresists.com/121642-2/>
 - Invitation to the National Convention on Industrial Corridors: “A New Ploy to Plunder Resources and People’s Sovereignty”:
<http://www.indiaresists.com/industrial-corridors-new-ploy-plunder-resources-peoples-sovereignty/>

- **Indonesia Masterplan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI)**

- Indigenous-led and Participatory Counter-Mapping initiatives in resistance to land grabs:

https://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_80-Radjawali_and_Pye.pdf and <http://iva.aippnet.org/indonesia-ngo-maps-out-indigenous-community-territories/>

- Fact-finding report by FIDH and Kontras:

<https://www.fidh.org/IMG/pdf/indonesie637a2014.pdf>

- Submission from the National Forestry Council People's Chamber:

<https://awasmifee.potager.org/?p=577>

- **African Union's New Partnership for Africa (NEPAD)**

- African Civil Society Declaration on NEPAD:

http://www.sarpn.org/NEPAD/july2002/acs_declaration/

- **Plan Puebla Panama**

- Originally opposed by 131 civil society organizations (including Zapatista Army of National Liberation). Some names include Action for Community & Ecology in the Regions of Central America (ACERCA), Mexico Solidarity Network, Global Exchange, and CISPES:

<https://www.nadir.org/nadir/initiativ/agp/free/colombia/puebla/guaso.htm>

- <https://nacla.org/article/plan-puebla-panama>

- Fact Sheet by CIEPAC:

<http://www.globalexchange.org/resources/americas/planpuebla>

- **One Belt One Road (OBOR)**

- Protests in Hong Kong against project: <https://www.hongkongfp.com/2016/05/18/no-to-one-belt-one-road-zhang-dejiang-get-lost-hk-protesters-rally-against-chinas-no-3-official/>

- Protests against resettlement in Sri Lanka: <http://www.voanews.com/a/silk-road-push-stirs-protests-between-china-sri-lanka/3702916.html>