

71299
v2

World Bank Extractive Industries Sourcebook

Good Practice Notes

REPORT for:



The World Bank
1818 H street, N.W
Washington, D.C. 20433 USA
www.worldbank.org/ogmc



**THE UNIVERSITY
OF QUEENSLAND**
AUSTRALIA

Centre for Social Responsibility in Mining
Sustainable Minerals Institute
The University of Queensland, Australia
csrm@smi.uq.edu.au
www.csrm.uq.edu.au

Project Team

Professor David Brereton, Director, CSRSM

Dr John Owen, Senior Research Fellow, CSRSM

Julie Kim, Research Assistant, CSRSM

Acknowledgments

CSRSM would like to thank the following contributors for providing insights, examples and case study information for inclusion into the Good Practice Notes.

- Jonathan Samuel (Anglo American)
- Chris Anderson (Newmont Mining)
- Simon Nish (RioTinto)
- Tim Offor (Pax Populus)
- Luis Alberto (Barrick Gold)
- Nick Bainton (Newcrest Gold)
- Kathryn McPhail (ICMM)
- Ian Wood (BHP Billiton)
- Bruce Harvey (Rio Tinto)
- British Gas, Kathryn Tomlinson and Synergy Global for permission to use material relating to the Sakhalin and Tintaya projects.

Table of Contents

Introduction	5
Project scope.....	6
Report Structure	6
Methodology and information sources	6
Part A: The Context	8
Benefits and risks of CDAs	9
Preconditions for effective CDAs	11
Part B: Determining the coverage of the agreement	13
Identifying ‘Qualified Communities’	13
Strategies for Identifying Qualified and Affected Communities.....	18
One or Multiple Agreements?	20
The Issue of Representation	20
Inclusive Engagement and Communication.....	23
Part C: Addressing Capacity issues.....	25
Agreement-making Capacity.....	28
Governance Capacity	31
Program Delivery Capacity.....	32
Part D: Roles and Responsibilities of Key Stakeholders.....	35
Role of Developers	36
Role of Communities.....	37
Role of Governments	38
References	42
Agreements.....	43
Abbreviations List.....	43
List of Tables and Figures	44
Case Study A: Ahafo Social Responsibility Agreement	45
Defining Community	45
Community Engagement and the Social Responsibility Forum	45
Case Study B: Argyle Diamond Mine Participation Agreement	48
Traditional Owner Relationship Committee	48
Capacity-Building in the Management Plan Agreement.....	49

Case Study C: Sakhalin Indigenous Minority Development Plan	51
Re-engaging and Renegotiating	51
The Sakhalin Indigenous Minorities Development Plan	52

Introduction

In the global arena there is a growing expectation that resource companies should contribute positively to the long-term development of impacted communities, regions and nations. For some countries this expectation has been expressed as a regulatory condition in which companies are formally required to engage in delivering social and economic benefits. In other instances, benefits are negotiated voluntarily between companies and local stakeholders as part of a broader commitment to Corporate Social Responsibility (CSR) principles.

There are a variety of structures and processes that can be used as vehicles for delivering development benefits to communities impacted by resource projects. These include company -controlled social investment programs, government-approved community development and impact mitigation plans, development forums, bi-lateral and multi-sector partnerships and collaborations, formal agreements, and community-controlled trusts and development funds.

Different terms for CDAs:

- Community Development Agreements
- Community Development Initiatives
- Voluntary Agreements
- Indigenous Land Use Agreements
- Partnering or Partnership Agreements
- Community Contracts
- Landowner Agreements
- Shared Responsibilities Agreement
- Community Joint Venture Agreements
- Empowerment Agreements
- Exploration Agreements (Canada)
- Impact Benefit Agreements (Canada)
- Social Trust Funds (Peru)
- Investment Agreements (Mongolia)
- Benefits Sharing Agreements (Chile)
- Social Responsibility Agreements
- Participation Agreements
- Socio-economic Monitoring Agreements

(Adapted From the World Bank Report: “Mining Community Development Agreements-Practical Experiences and Field Studies”)

The focus of these Good Practice Notes is on the design and use of one of these mechanisms: Community Development Agreements (CDAs). These agreements go by a variety of names (see text box) and their structure and content can vary considerably, depending on the context and when the agreement was formed.

The **key defining features** of a good practice CDA are:

1. the outcome (the agreement) is arrived at through negotiation and/or facilitation
2. communities, or community representatives, are engaged in these negotiations
3. the outcome is formalised in some kind of written document, which may sometimes, but not always, take a legal form
4. there is an intention to create mutual obligations between the parties, whether or not these are legally enforceable
5. the agreement includes provisions that address broader development objectives, rather than just being focused narrowly on financial compensation.

Project scope

These notes provide guidance on the processes and structures for negotiating, structuring and implementing agreements, and on how to maximise the effectiveness of CDAs as mechanisms for delivering development outcomes.

The notes have two primary audiences in mind:

- Resource companies which are considering entering voluntarily into a CDA, or which operate in contexts where CDAs are required;
- Governments that have established, or are considering establishing, legal regimes which mandate or enable CDAs.

The notes will also be of use to community bodies and civil society organisations involved in the negotiation and implementation of CDAs, or likely to be in the future.

The notes provide a brief summary of the potential advantages – and risks – of using CDAs (*see below*) but do not explore the broader question of whether and under what circumstances CDAs should be obligatory. This is a matter for ongoing debate which is beyond the scope of the current exercise. Similarly, apart from providing some examples of the types of development initiatives that have been included in agreements, the notes do not provide detailed prescriptions about what should be incorporated into CDAs.

Report Structure

The notes are organised under four broad headings:

Part A provides the context for the ensuing sections by providing a brief overview of the types of CDAs that are in operation and the circumstances under which there were created. This part also sets out both the perceived advantages of CDAs and the risks that may flow from poor processes and a lack of attention to design.

Part B focuses on the issue of how to determine, in specific cases, which communities should be covered by a CDA and how they should be represented. This includes a discussion about the importance of ensuring inclusiveness and representativeness and guidance on how to achieve this.

Part C is concerned broadly with the issue of the capacity of governments, companies and communities to negotiate, construct and implement CDAs. It provides guidance on how the capacity of different parties might be assessed and, outlines practical initiatives that can be taken to build capacity.

Part D deals with the role that different stakeholders and government in particular, can and should play in the negotiation, formation and implementation of CDAs.

Methodology and information sources

The notes have been prepared utilising several resources.

Firstly, a desktop review of secondary sources was conducted to gather information on the current thinking around CDAs. Sources included guides and reports from ICMM, IFC, the World Bank, World Economic Forum as well as academic journal articles.

Supporting the desktop research, a range of interviews were conducted with industry professionals experienced in designing and implementing CDAs within the extractive industries field. A set of interview questions were developed by CSRSM, informed by the desktop research. These questions helped to frame and provide guidance to the discussion. Interviewees were selected from a variety of leading companies operating in Africa, South America, Asia and Australia. Interviews were conducted over the phone and lasted for about an hour. A list of the interviewees is included in the acknowledgements.

Several agreements were also reviewed by the CSRSM team, to better understand the diversity of approaches to structuring CDAs and to identify potential good practice. Three of these are described in detail in appendices to the report and reference is made to several others in the text. The three detailed case studies are:

- Argyle Participation Agreement (Australia)
- Ahafo Social Responsibility Agreement (Ghana)
- Sakhalin Indigenous Minorities Development Plan (Russia)

Part A: The Context

CDAs have been formed in three main contexts:

1. *Where governments have imposed a specific obligation on developers to formally enter into a CDA.* For example, the Papua New Guinea Mining Act (1992) mandates that a company cannot occupy or operate on land until they have established and registered an agreement with landowners regarding compensation. The Act also mandates the convening of a Development Forum with various stakeholders to negotiate how best to use mining royalties. In Mongolia, Article 29.1 of the Mongolian Mining Law (2006) includes a provision requiring projects to form CDAs, although the Law provides no guidance about the processes to follow or what agreements should contain in relation to regional benefits.
2. *Where there is a legal regime that requires developers seeking access to Indigenous lands to negotiate the conditions of access or use with the traditional owners of that land.* In Australia, for example, the Native Title Act 1996 gives recognised Traditional Owners a 'right to negotiate' over land use. This is not a right of veto, but the alternative to reaching an Agreement – an attenuated process to obtain determination from a Tribunal – has created a strong incentive for both parties and developers in particular, to negotiate an outcome. Agreements negotiated in the early days of the Act had a narrow focus on financial compensation, but the trend has been towards broader agreements that incorporate a significant community development component (e.g. through the creation of community trusts, and inclusion of provisions addressing employment and training, business development, and support for education and health initiatives.) In Canada, agreements made with the First Nations communities are of two types: Exploration Agreements and Impact and Benefit Agreements (IBAs). These agreements are developed to establish a relationship between the industry and the indigenous or First Nation communities, which have recognised *sui generis* legal rights and entitlement to land title and mineral rights recognised by the Supreme Court of Canada.
3. *Where there has been significant conflict involving the developer and local communities, and an agreement has been negotiated in an effort to resolve these conflicts.* An example of this is the Tintaya Copper Mine in the highlands of Peru where a large number of local Indigenous people (campesinos) were resettled with very little compensation and even less consultation when the mine – which at that stage was owned by the Peruvian State - first opened. When BHP Billiton acquired the mine in 1996, it became the subject of community discontent surrounding the land acquisition process, the treatment of local community members, and water and air pollution. Five communities linked with local and international NGOs pressured BHP Billiton to take action. In response, the Tintaya Dialogue Table was instituted, to provide a forum for addressing these grievances. An agreement was reached with the five communities in 2004, after three years of negotiation. In addition to addressing issues relating to compensation and monitoring, the agreement established a community development fund.

There appear to be relatively few cases of CDAs being voluntarily negotiated between developers and communities in the absence of external drivers of the kind listed above. However, one example that falls into this category is the community agreements that have been developed for Newmont Mining's operation in Ghana. There is no legal requirement in Ghana for developers to enter into CDAs; rather the agreement involving Newmont in Ahafo was motivated by Newmont's decision to step-up its CSR commitments by contributing \$1 per ounce of gold sold and 1% of annual profits to a development fund. The company and the Ahafo Mine Local Community built an ongoing relationship using forums established during the early resettlement process of the mine. These forums became the foundation for a series of public roundtables, which resulted in the drafting of three community agreements relating to engagement, employment and broader social development opportunities.

Benefits and risks of CDAs

The potential benefits of CDAs, according to proponents of this approach, include the following:

- The agreement-making process that leads to a CDA enables impacted communities to articulate – and have addressed - their development goals and aspirations.
- Through engaging in dialogue and negotiation, communities are likely to acquire a better understanding of the financial and other constraints under which a developer is operating, which in turn facilitates expectation management.
- CDAs provide a mechanism for 'locking in' all parties to long term commitments. This can be important, given that key personnel and organisational structures, and even ownership arrangements, will often change over the life of a project.
- By defining mutual obligations, CDAs assist in building a sense of shared responsibility. Communities potentially can become partners in the project, rather than merely stakeholders, thereby strengthening the project's 'social licence to operate'.
- CDAs, provide a greater degree of certainty for all parties. Developers know what is expected of them. Communities, in turn, know what their own obligations are and what to reasonably expect of the developer (and government, where it is involved). This reduces the risk of future confusion and uncertainty, and of 'shifting goal posts'.

From the perspective of the three main parties-communities, developers and governments- the benefits of CDAs can be summarised as follows:

Table 1: Potential benefits of CDAs

For communities	For developers	For governments
<p>Recognition (of status as traditional/customary landowners, of acknowledgment of impacts)</p> <p>Compensation (for damage, disruption, changes)</p> <p>Development benefits</p> <p>Greater clarity around what the developer is committing to</p> <p>A framework for ongoing engagement</p>	<p>Greater security of access to land & resources</p> <p>Greater clarity around company obligations</p> <p>Reduced conflict and disputation</p> <p>A framework for ongoing engagement</p>	<p>Greater community acceptance of resource development</p> <p>Increased development contributions from companies and opportunities to leverage from this</p> <p>Greater security for the generation of public revenues (taxes & royalties) from projects</p>

In practice, of course, there is no guarantee that CDAs will deliver these benefits. Much depends on the context, the design of CDA itself and, in particular, the way in which it was formed.

Requiring parties to enter into an agreement where they lack commitment to and understanding of the process can be counter-productive and leave a legacy of uncertainty, mutual distrust and cynicism. Similarly, if a community or group feels that they have been pressured or misled into signing an agreement and that the outcome is unfair, or the result of a ‘back room deal’, this is likely to exacerbate, rather than ameliorate, conflict and discord and will make it difficult to hold the agreement together over time.

Another risk is that formalised agreements, particularly those which are the outcome of legalistic processes, can become rigid documents which constrain thinking and limit the capacity of the parties to adapt to changing circumstances. For example, the developer may take a view that the Agreement sets the boundary on what they need to do in terms of development initiatives and who they need to engage with. Similarly, community representatives may become overly focused on ensuring compliance with some relatively minor aspects of the Agreement, at the expense of the ‘bigger picture’.

Other risks include:

- The concerns and interests of groups that do not form part of the ‘qualified community’ may be overlooked. Examples include immigrant artisanal miners who reside locally, and who derive their livelihood almost exclusively from the local area, but who do not have the status of landowners.
- Without clearly defined objectives and roles, a CDA may be viewed as compensating for or fulfilling the role of government, or as duplicating important local or regional initiatives.

The challenge, therefore, is to establish structures and processes that minimise these risks and create the conditions for CDAs to meet the expectations and needs of all parties.

Preconditions for effective CDAs

What is a successful CDA?

In general terms, it is one that...

- contributes to positive relationships and dialogue between qualified communities and the developer;
- delivers beneficial outcomes for the communities and for other parties participating in the agreement.

(Adapted from ICMM, Indigenous People and Mining, p. 55)

The research on agreement-making and implementation points to the following as hallmarks of successful agreements.

- The process that led to the agreement was inclusive and is seen as fair and equitable by members and representatives of the communities that are party to the agreement.
- There is commitment amongst all parties to making the agreement work. Commitment, in simple terms, means that each of the parties understand and accept their obligations under the agreement, see it as having value, and act in ways that are reinforcing and affirming, rather than undermining.
- Each party has an understanding of the other’s objectives and needs and there is clarity around obligations and commitments. These are clearly identified and expressed in the agreement.
- The agreement includes effective governance arrangements for managing the relationship between the parties on an ongoing basis and adequate resources are allocated to support these arrangements
- There is periodic monitoring, review and adjustment of the agreement, to ensure that governance mechanisms are working effectively and progress is being made towards key objectives.

- The agreement is sufficiently flexible to enable adjustments to be made when circumstances change and/or it becomes apparent that desired outcomes are not being achieved.

(Adapted from the ICMM Good Practice Guide: Indigenous People and Mining, 2010)

It is beyond the scope of this study to explore in detail all of the ingredients that go towards a successful CDA, or the practical steps that need to be undertaken to achieve these outcomes. However, these broad principles need to inform how governments design legal and regulatory processes for enabling CDAs, and how developers engage in the agreement making and implementation process.

Part B: Determining the coverage of the agreement

Key issues

Determining which communities should be parties to the CDA.

Who should represent the communities?

Should there be one or multiple agreements?

Local vs. Regional agreements.

The importance of inclusive engagement and communication.

A key step in forming a CDA is to identify which communities should be covered by the agreement and ensure that they are appropriately represented. As part of this process, developers need to engage inclusively with communities and facilitate the free and open exchange of information. This initial process of engagement plays a critical role in determining the range of stakeholders who may have an interest in the project, and importantly, what that level of interest might be.

Identifying 'Qualified Communities'

For the purposes of determining agreement coverage, a distinction needs to be made between 'qualified' communities and the broader concept of 'affected' communities.

The term **affected community** applies to **any group who is impacted in some significant way by a project's activities**. These effects can include the loss of land or access to land, livelihood disruption, physical amenity impacts, economic change, cultural change, health impacts and changes in social dynamics and power relations.

Qualified community has a narrower meaning and describes **those groups which are formally represented in the agreement making process and which are intended as the principal beneficiaries of the agreement**. In some CDAs, the qualified community and the affected community are much the same, but in other situations they are clearly delimited. For example, the Participation Agreement for the Argyle Diamond Mine in North Western Australia applies only to Aboriginal people who have a traditional connection to the area in which the mine is located; it does not cover the non-Aboriginal people living in the area, or Aboriginal people who have moved there from other regions. Similarly, agreements in Melanesian states typically prioritise the interests of affected landowners over other residents of an area.

In practice, two main approaches have been used to define who constitutes a qualified community for the purposes of a CDA.

The first approach uses *connection to the land* as the main criterion. This has been the approach taken in Australia, Canada and Melanesia, and reflects formal and/or customary law in those societies. In the Canadian context, Exploration Agreements and IBAs are negotiated with indigenous and First Nation communities who hold land titles or mineral and land rights in the area. In Australia, as previously noted, the Native Title Act 1996 gives the Traditional Owners of land on which development is to occur a 'right to negotiate' and creates a framework for regulating the agreement-making process. In Melanesia, as also noted, traditional land owners and their representatives are at the core of negotiations around compensation and benefits and are required to give their consent before development can proceed.

The second approach for identifying a qualified community uses *impact* as the main criterion. Here the focus is on identifying those areas which are likely to be most affected by the development. All community members within that area are then deemed to be covered by the agreement, regardless of their status as landowners. By way of example, at one project reviewed for this study, the qualified communities have been defined as the three local government areas in which project infrastructure is located. This encompasses both people living in towns and settlements and

Qualified Communities in Ahafo

The Ahafo Gold Project operated by Newmont stretches across the Asutifi and Tano Districts in central western Ghana. The project is split into two phases: Ahafo North and Ahafo South. Newmont took a multi-stakeholder approach to incorporate all impacted communities within the concession, including those who may be impacted in the future, as well as factoring in the perspective of farmers, women and youth.

Source: Newmont Ahafo Social Responsibility Agreement (2008) & newmontghana.com

nomadic herders who graze livestock in the region. Another example of the application of an *impact* model is the Ahafo Gold Project in Ghana.

Where impact is the main criterion, a practical issue that often arises is: where to draw the boundary on which communities to include in the CDA? This can be challenging for several reasons:

- The scale, nature and duration of impacts – and therefore the issues which must be addressed – can vary significantly between communities within a given ‘zone of impact’.
- An impacted community could include a large city, where the resource project in question is only one of many industries and businesses that influence what happens in that city.
- An impacted community could be a long way geographically from the project. For example, in South Africa the families of mine workers often reside in villages hundreds of kilometres away.

Some projects have dealt with these challenges by restricting the scope of CDAs to *local* communities that are physically proximate to the mine and associated infrastructure and which experience the most direct impacts. A narrower approach still has been to concentrate on communities who have been resettled so as to allow the project to proceed, or those communities who are immediately adjacent to the mine. In this case, developers distinguish between “local” and “local local” when qualifying benefit. Other CDAs have taken more of *regional* approach, using local or provincial government boundaries, or natural boundaries such as valleys, rivers or islands, to define the qualified community. In a few cases, the challenge of dealing with heterogeneous communities and variable impacts has been addressed by forming multiple CDAs (see below, for further discussion of this issue).

Given the diversity of situations that can arise, it is not practical or desirable to provide hard and fast rules on how to determine which communities should fall within the scope of a CDA. What makes sense in a particular case will depend on several factors, including:

1. *Whether there are any groups that have legally or traditionally recognised rights over the land on or near where the development is to take place.* As noted above, this does not necessarily exclude the involvement of other groups in the engagement process or the formation of agreements with other entities who are not “rights holders”. However, the interests of “rights holders” will normally take precedence in such cases.
2. *The objectives of the parties in entering into a CDA.* If an agreement is being forged for the primary purpose of gaining land access, then the key parties to the agreement will generally be the landowners and occupiers of the proposed land lease and surrounding areas. If the primary aim is to mitigate the impacts of the project, local communities will usually be the primary focus, whereas if the aim is to deliver more broadly distributed social and economic benefits, a regional approach is likely to make the most sense.
3. *Community expectations and the level of interest in being part of a formal agreement.* Some communities may prefer a more flexible arrangement (for example, a regular stakeholder engagement forum) to a CDA. Similarly, some communities may not have high expectations

that they will or should benefit from an agreement, whereas others may react strongly if they are left out of the process.

4. *The degree to which different communities in an area share a commonality of interest and are able to work together.* People living in the same town or district may not see themselves – or be seen by others – as members of one community. This can happen, for example, where an area comprises a mix of Indigenous and non-indigenous people, or people from different ethnic groups. If there is a history of antagonism and non-engagement, it may not be practical to form an overarching CDA; either separate agreements will need to be negotiated, or other arrangements will have to be put in place to deliver development benefits. This can be complicated further when individuals who have a legitimate customary interest in the land have relocated out of the project area, but continue to maintain an interest in the development.
5. *The adequacy of local governance structures and processes.* This is important if consideration is being given to defining the qualified community in terms of a local or regional government area. (See the section on capacity for a further discussion of this issue.)

Local vs. Regional

An advantage of a regional approach is that it helps to ensure that the benefits of the project are more widely distributed, rather than being restricted to landowners and/or those who are most directly impacted. This can reduce community tensions over the distribution of benefits and provides more leveraging opportunities for social development, especially if government can be brought into the picture. However, for regional level CDAs to work, there also need to be provisions that deal with the particular interests and rights of landowners and directly impacted communities; otherwise these groups are unlikely to agree to be a party to the agreement.

Two examples of regional approaches are provided below:

Lihir

The community development agreement for the Lihir Gold project had its genesis in a nationally mandated Development Forum process, devised by the PNG government to ensure greater local participation and planning, and distribution of benefits.

In early 1995 the Development Forum agreed on royalties and special grants that were to be used on community projects throughout Lihir. The government of PNG was authorised to execute the Forum's agreements with the provincial government and local community leaders. After intensive negotiations the Lihir Mining Area Landowners Association (LAMALA) signed an Integrated benefits Package (IBP) agreement at a ceremony on Lihir on April 26th, 1995.

The principles of the IBP in the compensation agreement clearly specified that payment goes direct to the immediate landowners but overall development is for the benefit of all areas of Lihir. The IBP outlined a range of agreements and memoranda that covered direct aspect of mine-related developments, including compensation, housing relocation, infrastructure commitments by the local and national governments and the mining company, and commitments relating to environmental monitoring. The IBP also contained provisions for a Village Development Scheme (VDS). Funding through this scheme was principally for housing improvements, water, sanitation, and electricity provision. There was also a provision in the agreement that the IBP was to be reviewed every 5 years.

The review of the IBP, starting in 2000, eventually led to a revised IBP that was re-named the Lihir Sustainable Development Plan (LSDP). The LSDP is a larger and more detailed compensation package, considering in more detail the distribution of royalties, equity, special support grant expenditure, and a range of other benefits. The LSDP is not just about money or company-sponsored development but more of a road-map for Lihir to aim toward a self-sustaining future enabled by the mine but not dependent on it. It includes agreements around capacity building, infrastructure and utility development, town and village planning and other broader benefits.

Source: Bainton (2010).

Sakhalin

The Sakhalin Indigenous Minorities Development Plan, which is the agreement between Sakhalin Energy and the Indigenous Minorities of Sakhalin Island, was divided into two focus areas: mitigation programs and social development programs. The plan determined that the beneficiaries of the mitigation programs, which served to address more immediate impacts, would be confined to those living within the Project Affected Area, which is defined clearly in the Plan. The social development programs, which promote community development more broadly, were targeted at all Project Affected Peoples, as the Plan defined as encompassing all indigenous communities on the island.

Source: Sakhalin Indigenous Minorities Development Plan (2006)

Identifying Qualified and Affected Communities

Some specific strategies that can be used to help determine which communities in an area will be impacted by a resource development and which should be considered for inclusion in a CDA are:

- desktop research
- community consultation
- social mapping
- independent expert advice.

Desktop Research

Conducting desktop research about the community of the potentially impacted area can produce insights into the history and significance of the region and its inhabitants. This may help to elucidate internal political dynamics between community groups and identify communities for whom the land may hold particular significance or meaning. This can be especially useful in dealing with indigenous community groups.

Other useful resources are government census data, reports by university and research organisations, Native Title claims, ethnographies, genealogies, etc. Local authorities may have a register or a directory of local community groups and their precincts, which may be useful to determine which communities lie within affected zones. Community data may also be available from environmental and social impact assessments conducted by the company or other developers who have projects in the region.

Community Consultation

Especially in indigenous communities, consulting with traditional community elders or leaders may be helpful in understanding kin networks and genealogies. However, community self-identification also has some drawbacks namely, that those who define the community are often restricted by those who speak first and loudest, overshadowing more vulnerable groups within the community. For this and other reasons, an inclusive approach to engagement and consultation is considered essential (*see below*)

Changes over time in communities

During the exploration phases of their operations in Diavik, in the Northwest Territories of Canada, Rio Tinto engaged repeatedly with the surrounding community, recognising that shifting exploration involves moving into different geographical spaces and bringing new community groups into the equation. Re-engaging with the community over time and as the project changes also helped to ensure that the qualified community remains relevant and properly representative.

Source: Industry Interview

Community/Social Mapping

Another potential data source to assist in identifying relevant communities is a *social map*. These maps can be constructed by asking key questions such as:

- Who is – or will be - directly or indirectly affected by our business and how?

- What different groups exist in the communities around us and what are the conflicts of interest and power relations between these groups?
- What relationship do different groups have to the land? Are there any unresolved disputes between them over ownership and boundaries?
- Who is particularly vulnerable or marginalized within the community?
- Who lives near or is affected by the project site?

Information gathered from these questions can help to visually map where the community is situated in relation to the project and how communities are situated around each other. Creating a social map is helpful to develop a holistic view of the community, taking into account various community groups, relationships to land, community politics, geography and so on.

Defining Qualified Communities and Impact Areas for Ok Tedi

The Community Mine Continuation Agreements (CMCAs), at the Ok Tedi Mine in the PNG highlands, were negotiated between Ok Tedi Mining Limited and the affected communities for the purpose of attaining community consent to continue mining, despite known environmental impacts. The qualified communities to be included in the agreement were those that experienced environmental and social changes from mining activity, mainly from impacts on the Ok Tedi and Fly River and its water system. Nine geographic regions were selected for inclusions in the negotiation and consultation process:

Because impacts from mining extended beyond the Mine Lease Area, Ok Tedi needed to also identify the qualified downstream communities. One strategy used was social mapping, undertaken as part of community consultations. Community identification was also supported by studies conducted by anthropologists who measured changes in livelihoods and cultural practices.

Third-Party Experts

Utilising independent experts who may have insights into the local area can often provide a more thorough understanding than desktop research alone. Experts such as ethnographers, anthropologists, genealogists and historians can provide insights on topics such as kin networks, family lineage and inheritance, community history and local politics and so on. These experts can also serve as liaison points between the company and community throughout the CDA process.

Though third-party experts can provide independent advice, their input should not be taken as completely unbiased. Third-party expertise should help to inform other information sources but not stand as the only authority.

Third Party Experts in Defining Communities

An example of the use of third-parties is the process of community identification used for the Participation Agreement for the Argyle Diamond Mine in North-west Western Australia. Argyle requested that the Kimberley Land Council, an Aboriginal community organisation, commission an ethnographic study of the area. The study, which identified 22 families from seven Aboriginal groups who held primary or secondary rights to the mining area, was then used to inform which communities would be covered by the agreement.

Source: Argyle Diamond's "Breaking New Ground" (2005)

One or Multiple Agreements?

As noted above, in some cases it may make more sense to set up multiple CDAs, rather than relying on a single, overarching agreement. This can be the case, for example, where a development project impacts on regions that are culturally and politically distinct (such as a trans-national pipeline), or where communities experience different impacts and have different needs (for example, communities along a transport route as opposed to those located near to where the resource is being extracted).

Forming multiple agreements, rather than one over-arching agreement, has the advantage of flexibility, but can be very resource-intensive, in both the negotiation and implementation phases. Further, without some kind of integrating structure, there is a danger of inconsistency in approach across agreements, which can have deleterious consequences. For example, if one community or region sees its agreement as containing significantly fewer benefits than the one negotiated by another group, this could damage relations with the project and fuel inter-group rivalry and conflict.

Ok Tedi mine in PNG dealt with this issue by setting-up an umbrella process, involving all impacted communities, where broad principles and allocations were established, and community-specific agreements were then developed within this framework. Rio Iron Ore in Western Australia is using the same approach to negotiating new agreements with ten different traditional owner groups.

Newmont's Ahafo project provides an example of how multiple agreements can work to the advantage of the community and the developer. The approach at Ahafo was to define the key areas of mutual interest. While the various agreements reflect defined content areas, they are held together by a broader Social Responsibility Agreement, which outlines the roles and responsibilities of each party and the overall way in which the parties are to work together to implement key community initiatives.

The Issue of Representation

Agreement making and negotiation with communities normally is done through representatives of those communities, rather than directly. More direct forms of engagement, such as public meetings and focus groups, are critical for ensuring that there is broad support for and understanding of the agreement and that all voices in the community have been heard (*see below*). However, it is generally not practical to give every single community member a voice at the negotiation table, or to require that each of them sign-off on the agreement. Similarly, on-going governance has to take place through structured processes, rather than relying principally on participatory mechanisms.

Often, developers find it easiest to work through established local political structures, but this carries with it some significant risks. Those who occupy formal roles in the community (e.g. mayor, tribal leader) may not necessarily enjoy the confidence of the community and may not be in a position to speak for significant sections of it. In some instances, formal roles may overlap, but not speak directly to each other. For instance, a mayor or provincial leader may not hold the same level of customary authority as a tribal or village leader. Moreover, local powerbrokers cannot always be relied on to communicate information back to the wider community.

One way of ensuring the validity of community representatives is to utilise a democratic election process for a community to directly select people to represent them in the CDA process. For example, representatives on the Ahafo Social Responsibility Forum with Newmont Mining are first nominated and then elected using a secret ballot and a transparent ballot box to ensure a fair process. Chosen representatives serve five year terms with a maximum total of 10 years in service. The process for renegotiating the OK Tedi Mine Continuation Agreements is another example of the use of direct election processes to select community representatives (see text box).

Ok Tedi: Choosing Community Representatives

In 2005, the Community Mine Continuation Agreements (CMCAs) between the mining company, Ok Tedi Mining Limited (OTML), and local and downstream communities in Papua New Guinea, were renegotiated in light of increased environmental impacts and a need to review the agreements and compensation accordingly. To establish communications with the communities and to develop a negotiation process, the company needed to address some significant challenges in community representation.

Community leaders in the mine's impact areas were often mistrusted, viewed more as self-aggrandizing and as diverting funds from reaching the village level. Communities also suffered from other difficulties including lack of institutional capacity, strong governance, geographic accessibility and so on.

These issues were addressed through forming the CMCA Review Working Group. The Working Group was to have on it representatives of OTML, the PNG national government, the Western Province government, PNG Sustainable Development Program Ltd, representatives of women and children, the environment and church groups.

As areas of dealing with the issue of mistrust of community representatives, the project team advised the 152 villages in the impact zone on processes for democratically selecting a representative and an alternate to serve each village. The representatives, in turn, selected three delegates to represent each of the nine regions, with one lead delegator, who sat at the Working Group table.

Though the process to identify and elect delegates took time and countless village meetings, the process was seen by both the community and the company as democratic, transparent and equitable. The women's group and the NGO were actively engaged in a concerted effort to ensure that even the underrepresented perspectives were incorporated into the roundtable for the renegotiation process.

Source: Ofor and Sharp (2008)

One of the limitations of relying on a process of democratic election of representatives is that minority and marginalised groups may still lose out in this process. For example, in the case of Ok Tedi, all but one of the 152 village representatives were male, despite the strong urging of the company. This imbalance was partly addressed by providing for the PNG Council for Women to be represented on the Review Working Group, which was the key negotiating body, but women were still very much in the minority.

An alternative to the direct election model is to create a multi-stakeholder forum, using a sectoral model of representation, to ensure that different groups in the community are all given a voice. The Ahafo Social Responsibility Forum is a good example of this approach. The Forum consists of 55 members led by a respected independent facilitator and co-monitor representing a broad range of community members, government authorities and other stakeholders. For community input, the

Forum also includes representation from farmers, women and youth groups for both districts, in addition to chiefs from each community town.

There will often be situations where it is not practical or appropriate to go outside of established power structures. For example, if there is a democratically elected local council, it will generally make little sense to run a parallel process, unless the council lacks legitimacy in the community. Likewise, it would be culturally inappropriate – as well as counter-productive – for a developer to circumvent the recognised traditional leaders of an Indigenous community. Nonetheless, these constraints should not prevent a developer (or government, for that matter) from advocating for the interests of excluded and marginalised groups where necessary. As discussed below, an inclusive engagement and communication process can also help to facilitate a broader dialogue and information exchange with communities.

In Canada, to avoid situations where internal disagreements inside the community may be ignored or concealed by the leadership negotiating the agreement with the company, it is considered best practice to embed a formal process of ratification by community members in the agreement itself, by means such as a vote, referendum or otherwise. (ICMM Good Practice Guide on Indigenous Peoples and Mining, 2010: p. 59).

Inclusive Engagement and Communication

Inclusive engagement and communication throughout the life of a CDA will help ensure that:

- issues of concern to local communities are being conveyed by their representatives
- the voices of groups who are not formally represented in the agreement and negotiation process are heard
- community members know what their representatives have agreed to, and are kept informed about what is happening with the CDA and the key decisions that are made (this links to the issues of accountability and transparency).

Not everyone in a community can be party to the actual negotiations; this normally has to be done through representative organisations and community leaders. However, members of the broader community should be able to feel that their voices have been heard and interests taken into account.

Engagement with the community should begin as early as possible, preferably in the exploration phase. Community engagement at this stage is crucial as it establishes the tone and expectations for the future. Maintaining connections with the community across the project life cycle will help ensure that CDAs continue to meet community needs and will promote transparency and trust between the company and the wider community.

Communications regarding the CDA and its negotiation process should be appropriate for all parties. Often times CDAs are negotiated in areas in which English is not the primary language and literacy levels may be low. Because of this, developers need to ensure that all documentations and information be available not only in multiple languages but in a variety of mediums, to enable discussion with all necessary stakeholders. Furthermore, even when the local community understands English, it is important that key and defining concepts are comprehensible to all parties. This may mean simplifying legal jargon and translating percentages and figures. In the case of Ahafo,

for example, a radio program was used to announce any decisions made regarding the agreement in order to reach a wider audience in a direct manner. The Argyle Participation Agreement includes text boxes written in plain English that summarise what each section is about for all parties to understand.

Engaging with Minority Groups

Special measures will often be needed for engaging with vulnerable groups such as women, youth, indigenous people and religious and economic minorities who may be excluded from a community's traditional decision-making processes. "Qualified communities" should not be limited to only those who speak out first and loudest but also need to include the disenfranchised. Often times, these marginalised groups experience the greatest impacts with the lowest capabilities to voice their concerns.

Minority and marginalised groups can be engaged separately through baseline surveys, disaggregated consultations, focus groups, informal discussions and a range of participatory approaches. In some cases this may involve going outside of traditional decision-making processes. When this issue arises developers should endeavour to be respectful of the community's power dynamic while still engaging with all groups within the community. One way of doing this is to approach traditional decision-makers to explain the importance of understanding the project's impacts on all sectors of community and of promoting cooperation and collaboration amongst all members of the community.

Part C: Addressing Capacity issues

Key issues

What is 'capacity' and why is it important for effective CDAs?

How can the capacity of the different parties be assessed?

What strategies can be used to strengthen capacity, both in the agreement making and implementation stages?

Capacity is an umbrella term for a number of different, but linked components, encompassing: "functional capacity", "technical capacity", and "behavioural capacity" (see text box).

The success of a CDA relies heavily on all parties having the capacity to participate constructively in the agreement making process, support the agreement over time and deliver on their respective commitments.

Assessment of capacity should begin as early as possible and be ongoing throughout the life of the agreement. Where capacity gaps are identified, sufficient time and resources need to be allocated to developing the requisite skills, training and organisational capabilities.

In dealing with capacity issues, it is useful to ask the following questions:

- **WHOSE** capacity are we trying to build?
- Capacity to do **WHAT** and **WHY**?
- **WHEN** do we need to build these capacities?
- **WHO** should deliver the capacity building?
- **HOW** will we know if we have succeeded? (IFC Strategic Community Investment (2010), pg 49)

Types of Capacity:

FUNCTIONAL CAPACITIES are "crosscutting" capacities that are relevant across various levels and are not associated with one particular sector or theme. They are the management capacities needed to formulate, implement, and review strategies, programs, and projects.

TECHNICAL CAPACITIES are those associated with particular areas of expertise and practice in specific thematic areas, such as microfinance, small business training, education, health, or agriculture. Technical capacities tend to be acquired through more formalized instruction, study, and practical training. Because this tends to be a more specialized set of skills, the target audience is generally much narrower.

BEHAVIORAL CAPACITIES have to do with cultural shifts and changes in attitude. An important component of capacity building, especially in a multi-stakeholder context, is raising awareness in order to affect changes in the attitudes, practices, and behaviours of individuals, groups, and organizations. These changes include partnering, building alliances, and interacting in new or different ways. Behavioural capacity building can also prompt changes in strategy direction, policies, and institutional culture.

Adapted from IFC Strategic Community Investment (2010): p. 53

In the case of CDAs, capacity issues may arise at both the agreement-making and implementation stages, with the latter encompassing both governance (which relates to the agreement itself) and

program delivery (which relates to outputs and outcomes). The key capacity requirements at each of these stages is summarised in Table 2 (see below).

Table 2: Capacity requirements for CDAs

<u>Communities</u>	<u>Developers</u>	<u>Governments</u>
<p>Agreement Making</p> <p>Functioning representative structures and processes.</p> <p>Knowledge of the project & of practices in the resources sector more broadly.</p> <p>Capable representatives who have the time and motivation to participate.</p> <p>Understanding and acceptance of the broad principles of agreement-making.</p>	<p>Agreement Making</p> <p>Clear lines of organisational responsibility.</p> <p>Understanding of the local cultural and political context.</p> <p>Understanding and acceptance of the broad principles of agreement-making.</p> <p>Capable and committed personnel.</p> <p>Personnel with knowledge of all the different aspects of the project</p>	<p>Agreement Making</p> <p>Understanding and acceptance of the broad principles of agreement-making and a willingness to respect the process.</p> <p>Knowledge of the project & of practices in the resources sector more broadly.</p> <p>Trust of the qualified communities.</p>
<p>Governance</p> <p>Functioning representative structures and processes.</p> <p>Commitment to respecting the agreement and to making it work.</p> <p>Capacity to ensure that community members do not act contrary to the agreement.</p> <p>Willingness and availability of representatives to participate in agreement governance structures.</p> <p>Knowledge of administrative and organisational systems and processes (e.g. governance of trusts; fiduciary duties; meeting procedure).</p>	<p>Governance</p> <p>Commitment to respecting the agreement and to making it work.</p> <p>Organisational systems and process for ensuring that agreement commitments by the company are honoured.</p> <p>Willingness and availability to participate in agreement governance structures.</p> <p>Effective and inclusive community engagement and communication processes.</p>	<p>Governance</p> <p>Commitment to respecting the agreement and to helping make it work.</p> <p>Willingness and availability of representatives and officials to participate in agreement governance structures (where required).</p> <p>Organisational systems and process for ensuring that agreement commitments by government are honoured.</p> <p>Trust of the qualified communities.</p> <p>Will and capacity to act consistently with the norms of good governance (e.g. accountability, transparency, impartiality).</p>
<p>Delivery</p> <p>Resources and expertise to design, manage and deliver community run programs.</p>	<p>Delivery</p> <p>Resources and expertise to design, manage and deliver company controlled programs.</p>	<p>Delivery</p> <p>Resources and expertise necessary to design, manage and deliver government controlled programs</p>

Table 3 sets out some specific questions that can be asked by project proponents and external organisations to assess the agreement-making and implementation capacity of the different parties to a CDA.

Where capacity of one or more key actors is assessed as lacking, the following responses should be considered:

- to the extent that is practical, delay moving into the negotiation and implementation phases until strategies are in place to address significant capacity gaps (see below)
- limit the scope of the agreement and rely more on other, more flexible, mechanisms for delivering development outcomes
-
- place a time limit on the agreement and build in a periodic review process, to enable the agreement to be re-negotiated or adjusted if necessary.

Table 3: Questions to ask to assess capacity

Community	Developer	Government
Does the community have functioning representative structures and processes?	Has the company had previous experience of negotiating CDAs?	Do government representatives and officials understand the principles of agreement making?
What experience have community representatives had in engaging with resource companies?	Are company personnel and representatives trained in culturally-appropriate negotiations techniques and relationship-building?	What experience have government representatives and officials had in engaging with resource companies?
What understanding do community members and representatives have of the project and its potential impacts?	How much knowledge does the company have of the local communities and the region where the project is located?	How well resourced are government representatives and officials to participate in the agreement making and implementation process (particularly at the local level)?
Is the local culture one where people are comfortable with – and experienced in - negotiation and agreement making?	Does the company recognise its obligations to act responsibly and contribute to positive development outcomes, or does it see its role in narrowly commercial terms?	How much knowledge to government representatives have of the modern resources sector and of current and emerging practice in relation to community development?
What resources (e.g. expert advice, financial and/or organisational support) can the community draw on?	Does the company have effective management systems in place for maintaining continuity and for following through on commitments and undertakings?	To what extent do the communities trust government and its representatives?
Is there a willingness on the part of community representatives and members to focus on achieving broader development objectives, rather than just cash compensation?	Has the company had any previous experience in the design and delivery development initiatives?	How much commitment is there to norms of good governance at the different levels of government

<p>What experience and training have community representatives and leaders had in organisational governance (e.g. management of trusts and funds).</p> <p>What experience is there in running community development initiatives?</p>		<p>(e.g. accountability, transparency, impartiality)?</p> <p>How much expertise do the different levels of government have in program design and delivery?</p>
--	--	--

In some cases – and where the law allows it – the best course of action may be not to formalise an agreement at all. However, this does not abrogate developers from a responsibility to engage widely with impacted communities and to focus on minimising adverse impacts and delivering positive development outcomes.

Agreement-making Capacity

As emphasised throughout this document, the success or otherwise of a CDA will be heavily influenced by what happens at the agreement making stage. If developers have had no previous experience of agreement-making with communities, things can go badly wrong – particularly if the company’s representatives approach the process as if it was just another commercial negotiation. The same is the case if communities are disorganised, and/or lack the knowledge, experience and resources to engage constructively and on an equal footing with developers. Governments that do not understand the process can likewise jeopardise the outcomes through inappropriate or poorly timed interventions.

Strategies for strengthening community capacity to participate effectively in the agreement making process include:

- *Providing financial and logistical assistance.* It takes time and resources for communities and their representatives to be involved in the discussions, negotiations and consultations that are integral to the formation of an agreement. Some communities may be able to self-manage this process, but often they will need financial and other support (such as logistical assistance to attend meetings). Responsible developers will generally recognise this and be prepared to agree at the outset of negotiations to underwrite the costs of the agreement making process.

- *Assisting communities to access independent expert advice.* In the case of the Argyle Participation Agreement, Rio Tinto provided funding for the Traditional Owners to employ outside legal advice for support during negotiations. In the renegotiation of the Ok Tedi Mine Continuation Agreements, community representatives were given access to independent experts to verify the environmental data presented by OTML and obtain general legal guidance.
- *Providing training on agreement making and negotiation.* Communities in some parts of the world will be unfamiliar with formal negotiation procedures and it will be important to establish mutually comprehensible principles and procedures. Ensuring that community representatives comprehend what interest-based negotiations entails or what negotiating in good faith means is essential to the overall success of the process. For the Ok Tedi Mine Continuation Agreement negotiations, training was provided to community representatives and company personnel on interest-based negotiations in an effort to foster cooperative and communicative dialogue between the parties. Additionally, representatives and delegates were trained to understand the process and requirements of participating in a roundtable with other stakeholders.
- *Ensuring that community members and representatives have a good understanding of the project and are aware of current and emerging practices in the sector.* This reduces ‘information asymmetries’ in the negotiation process and facilitates a more informed dialogue. Community awareness can be facilitated by preparing materials in the local language in easy to read form, delivering visual presentations, facilitating visits to other operations and assisting groups to link to other communities that have had experience of large-scale resource developments. These activities do not have to be undertaken by developers. To the contrary, the process is likely to have more credibility if an external organisation, such as a respected civil society organisation or a representative body (e.g. a Land Council), takes the lead. In some countries, useful resources have been prepared for communities to assist them to better understand the extraction process and the drivers and constraints that influence corporate behaviour. (See, for example, the IBA Community Toolkit that has been prepared to assist Canadian Indigenous communities to engage with resource developers: <http://www.ibacommunitytoolkit.ca/>).

Providing support to communities in negotiations:

The Gnaala Karla Booja people of Western Australia received assistance and support from the South West Aboriginal Land and Seal Council (SWALSC) during negotiations with the Boddington gold mine operators.

The SWALSC helped to ensure that the community interest was properly voiced and addressed in negotiations. It also helped to explain the process to the community and to clarify certain practical difficulties to manage high community expectations around the agreement.

(Adapted from the ICMM Good Practice Guide: Indigenous People and Mining, 2010: p. 59)

- *Appointing independent mediators.* Where communities have had little or no prior experience in dealing with resource companies and there are concerns about power imbalances in the negotiation process, this can sometimes be allayed by the appointment of skilled, independent, mediators. Ideally, the State should take responsibility for appointing and funding mediators, but where trust in government is low, this is unlikely to be a workable option. In such circumstances, it may be necessary for a developer to take on this role; if this is the case, it is absolutely critical that the person who is selected as a mediator is seen to be independent from the company and is acceptable to the community.
- *Funding initiatives to improve governance capacity at the local level.* As a longer term strategy, developers could consider supporting reputable organisations to work with local communities to strengthen representative structures and governance processes. This could encompass activities ranging from the resolution of long-standing disputes and conflicts within communities, through to practical assistance in setting up and resourcing representative bodies.

Capacity building should not be seen as something that is for communities alone. Often companies and governments will also be deficient in the skills, resources and experience needed to make a constructive contribution to the agreement making process.

Actions that developers can take to build their internal capacity include:

- ensuring that company personnel and representatives are trained in culturally-appropriate negotiations techniques and relationship-building
- building awareness and understanding of the local culture and socio-political context within the project team
- utilising knowledgeable and experienced external advisers (although companies need to be careful to ensure that they are not seen as contracting out their responsibilities)
- connecting with other developers who have projects in the area to learn from their experiences
- building internal management systems to ensure that everyone within the organisation is 'speaking from the same page' and that company commitments and undertakings are recorded and acted on.

In the case of governments, developers could consider providing representatives and officials with access to training and experiential opportunities (e.g. study tours), as well as logistical support to attend meetings and other significant events. International organisations such as the World Bank or Asian Development Bank may also be in a position to assist with government capacity building to enhance understanding within government of the agreement making process.

Governance Capacity

The long term success of a CDA depends not only on a good front-end process, but on the establishment of effective governance arrangements to manage on-going relationships between the parties. As emphasised by the ICMM in the context of agreements between mining companies and indigenous communities:

Governance arrangements should have the ultimate objective of providing assurance to all concerned parties as to the transparency, accountability and successful achievement of the objectives of the agreement. (Indigenous Peoples and Mining Good Practice Guide, p.69)

Governance arrangements typically include:

- liaison and management committees
- financial management structures such as trusts and foundations
- dispute resolution processes
- internal and external communication processes
- monitoring and review processes.

Well-designed CDAs will include a financial allocation specifically to support the ongoing governance of the Agreement.

Ensuring that the different parties have the resources, skills and motivation to participate constructively in these processes is key to ensuring the long term viability of the CDA.

Acknowledging that local leadership exists is a good starting point to developing community capacity to be actively involved in agreement governance. Though it may be difficult to recognise in some cases, recognising local leadership and building their capacity will help build the community's ability to self-govern and sustain the CDA.

The Partnership Agreement between Argyle Diamonds and the local Traditional Owners (TOs), includes commitments to provide training for all representatives selected to serve on the Relationship Committee, the Agreement's governing body). The Agreement also creates roles such as the Secretariat and the Executive Officer to provide support to the local community and to the TO representatives. They help to organise meetings, deliver announcements and updates, provide

Defining Expectations of Community Representatives

The Argyle Participation Agreement outlines what capacities are needed of Traditional Owner (TO) representatives for the Relationship Committee. Clearly stating what is needed and expected of the representatives will help to determine where gaps may exist and what training should be executed. The necessary capacities are:

- an understanding of the ILUA, Management Plans and etc.
- understanding of Argyle Operations, structure, policies, procedures.
- understanding of TO Relationship Committee procedures
- capacity to comprehend and assess budgets and other financial statement relevant to the TO relationship Committee
- capacity to comprehend and assess written and oral reports

administrative assistance, organise training, communicate with the company and other supportive activities. Another feature of the Agreement is that it details the capacities required of community representatives on the Relationship Committee (see text box).

Ok Tedi has addressed the issue of community capacity by helping to provide training in trust management, governance, planning and budgeting to assist community members to manage community funds independently and discourage reliance on the company.

Resource developers need to ensure that company representatives on liaison committees and other governance structures are culturally sensitive and take their roles seriously. Given that company personnel typically turnover in their roles every few years, or even less, there need to be arrangements in place for succession planning, plus effective management systems for ensuring that the company is complying with its commitments under the agreement and that any issues and concerns raised by community representatives are recorded and addressed.

Program Delivery Capacity

One of the defining features of CDAs is that they seek to progress development objectives, rather than just being narrowly focused on compensation arrangements. This broader focus requires that there is some capacity amongst the parties to the agreement to design and implement effective development initiatives, or at least to partner with organisations that do have this capability.

While it does not focus specifically on CDAs, the IFC Community Investment Handbook (released mid-2010) provides good general guidance on the types of initiatives that can be undertaken (by project proponents in particular) to improve program delivery capacity at the local level.

Table 4: Actions to build local program delivery capacity

Types of Interventions	Potential Activities
Networking	Connecting communities, organizations, and individuals through formal and informal affiliations to expand service delivery, improve information sharing, set performance standards, or empower groups
New Entity Creation	Creating new water user groups, co-ops, civil society organizations, borrower groups, etc.
Training	Designing and delivering curriculum to support transfer of critical skills
Partnering	Brokering new relationships and joint ventures between key actors to meet community investment objectives
Leadership Development	Serving as a role model or counsellor to emerging community leaders
Organizational Development	Providing support to local organizations to enhance performance
Exchanges and Visits	Sponsoring exchanges to promote learning and cross-fertilization

Partnering with NGOs to enhance development:

The Pascua-Lama project, operated by Barrick Gold, is situated in the Atacama region of north central Chile. In order to achieve its commitment to addressing poverty issues of its neighbouring communities, Barrick Gold entered into a partnership with three local NGOs, recognising the strengths and capacity of local organisations and their potential to advance Barrick's commitment development goals. The Atacama Commitment is a signed alliance between Barrick Gold, three Chilean organisations (*Teletón, Un Techo para Chile, and América Solidaria*), and the UN Global Compact.

Source: ICMM (2009)

Coaching and Mentoring	Staff share time and expertise
Social Marketing	Applying principles of commercial marketing to raise awareness and influence behaviour changes
Development of Local Service Providers	Strengthening the quantity and quality of local service providers
Direct Management Assistance	Company staff are either seconded or provide direct technical assistance
General Operating Grants	Providing small grants to support core staff at key agencies

Source: IFC Strategic Community Investment Handbook (2010), p.55

One option is for the parties to identify civil society groups to form partnerships and collaborations to deliver some or all the initiatives that are being funded through the CDA (see text box). Civil society groups are often better resourced and have greater experience in designing and implementing community projects than do resource companies, communities or governments themselves. However, if an NGO or some other external group is to be used, it is very important that this is done with the consent of the community concerned; otherwise there is risk that there will be a lack of buy-in, or possibly even active resistance. The organisation must also be able to demonstrate strong local knowledge and a track record of successful delivery.

Another strategy is to focus on strengthening the administrative and program local delivery capacity of local and regional government. For CDAs to be successful and sustainable in the local context, local and regional government must have a cooperative relationship with the qualified community. However, these levels of government are often disadvantaged by lack of resources, insufficient management capacity, a weak policy structure, poor standing in the community and a lack of technical skills.

A recent example of a developer working with local government to improve delivery capacity comes from the Dominican Republic (see text box). While this does not involve a CDA, the same general principles are applicable to the CDA context.

A third example of an innovative approach to capacity building is the Sakhalin Indigenous Minorities' Development Plan (SIMDP). The Plan allocates 10% of its budget towards funding the Sakhalin Indigenous Minorities Mini-Grant Fund (SIMMGF), which is intended to sponsor community projects that local community members propose and design themselves. The primary control and responsibility of the SIMMGF is with the Sakhalin Indigenous Minorities Council to manage the fund and review and evaluate proposals. In addition to building the capacity of local community organisations in relation to the governance of specific projects, this arrangement is intended to build the capacity of the local community more generally so that they can eventually take over implementation of the SIMDP completely.

Partnering with Local Government to Build Capacity

Barrick Gold and Gold Corp jointly own Pueblo Viejo Dominicana Corporation, which operates a gold mine in the Pueblo Viejo region of the Dominican Republic. Barrick Gold entered into an innovative partnership with the three surrounding municipalities, the Dominican Federation of Municipalities, the Canadian Embassy, and a local NGO to help communities develop and implement their own development plans. By partnering with the local municipalities to deliver development to the communities, Barrick aims to help build local municipal capacity thereby ensuring long-term sustainability of the development plans. Through this partnership, the three municipalities were the first in Dominican Republic to create governance mechanisms, such as the Municipal Economic and Social Councils, which enable civil society to participate in developing and implementing development plans.

Source: Ausland and Tonn, 2010

Part D: Roles and Responsibilities of Key Stakeholders

Key issues

How broadly should the responsibility of developers extend?

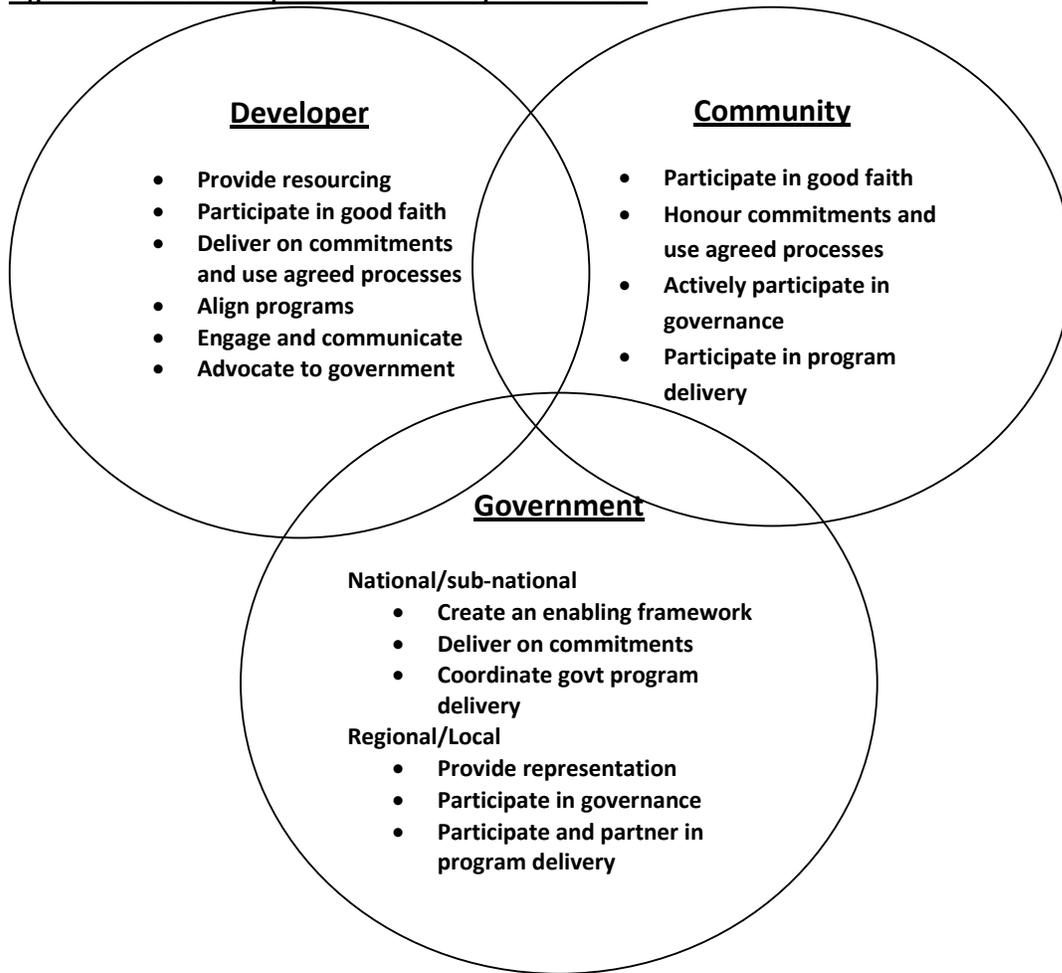
What is it reasonable to expect of communities and their representatives?

Should governments be parties to agreements?

This final section discusses the roles and responsibilities of the different stakeholders in CDAs, focusing particularly on the potential contribution of national, sub-national, and local government. Given the diversity of circumstances in which CDAs may be formed, care must be taken not to over-specify these roles, or to give the impression that there is a one size fits all approach. For example, the capacity of governments – and the degree to which they are seen by local communities as having legitimacy – varies significantly across jurisdictions, which will impact on the extent to which government can and should be actively involved as a partner in the CDA.

There are, however, some general observations that can be made the responsibilities of the different parties and what is required of them if an agreement is to be effective over time. These roles and responsibilities are summarised in Figure 1 and discussed in more detail below.

Figure 1: Roles and Responsibilities of Key Stakeholders



Role of Developers

Developers' core responsibilities in relation to CDAs can be summarised as follows:

- participate in good faith in the agreement making process
- disclose all relevant information and act transparently
- be clear about what the company will – and will not - do
- provide financial and other resources to enable the objectives of the agreement to be advanced
- honour the commitments made by the company in the agreement
- where community capacity is low, take pro-active steps to address this – preferably with the assistance of other organisations

- participate actively in the governance of the agreement and uses the processes laid out by the agreement wherever it is practical to do so
- respond promptly and constructively to community concerns and grievances
- advocate to government if one or more levels of government have failed to meet their agreed responsibilities to local communities
- maintain open and inclusive engagement and communication with the communities covered by - or otherwise affected by – the agreement
- consult with the community whenever there is material change in the mine plan and/or the scheduling of mine closure.

How broadly should companies define their role?

There is an ongoing debate about where the line of responsibility should fall between government and developers in terms of responsibility for community development and the provision of soft and hard infrastructure. In an ideal world, government should be responsible for the delivery of core services such as health, education, law and order, and physical infrastructure such as roads and airports. In practice, resource companies are increasingly operating in regions where government presence on the ground is minimal and there is a lack of capacity to deliver even basic services. This means that the question of what is an appropriate role for the developer to play has to be dealt with on a case-by-case basis, taking account of the local context and the capacity and needs of communities, rather than being determined *a priori*.

Some general areas in which a company may play a lead role include: stakeholder communication and engagement, financial and material support for local communities, monitoring and evaluation, community coordination, and training of the local community in technical and financial skills (see previous section). In addition, companies are often well placed to advocate on behalf of local communities when there are shortcomings in government service delivery and commitments are not honoured.

Role of Communities

Communities are not simply the recipients of benefits but play a central role in the formation and implementation of CDAs, both through community representatives and directly.

For CDAs to be effective over time, there needs to be a basic level of commitment in the community to the agreement and a preparedness to use agreed processes to address concerns and disputes. If community members resort to direct action whenever an issue arises, or take whatever opportunities they can to overturn what had previously been agreed to, the CDA will quickly lose credibility and be at risk of falling into disuse. Taking responsibility also entails a willingness to participate, through community representatives, in the ongoing governance of the agreement and to cooperate with – and participate in – programs that are intended to benefit the community.

Community representatives, for their part, should:

- strive to represent the interests of the community as a whole, rather than just particular groups within it
- keep other communities informed about what is happening with the agreement and how funds are being disbursed; and, in turn, communicate information from the community back to the company and government
- act ethically and with due diligence in the discharge of their responsibilities, particularly in relation to financial administration and the allocation of funds.

Role of Governments

In considering the role of government in CDAs, a broad distinction can be drawn between the national and sub-national (state, province, region, etc) level and the local level (municipalities, local authorities, councils, etc.)

National and Sub-national

National and sub-national governments can potentially play several roles in CDAs:

- as a *party* to the Agreement itself
- as an *enabler*, by creating a regulatory environment to encourage and facilitate CDAs, or otherwise acting as an 'honest broker' to assist the parties to reach and sustain an agreement
- as a *contributor* to the resourcing arrangements that underpin the CDA (e.g. by providing matching or supplementary funding)
- as a *participant* in governance structures, such as advisory and monitoring committees
- as a *deliverer* of programs that form part of, or are aligned with, the CDA
- as a *coordinator* of government programs and initiatives at the regional and local level.

The first two of these roles are discussed in more detail below.

Governments as Parties

Some commentators have suggested that national and sub-national governments should not be parties to CDAs, on the grounds that their function is to take an arm's length regulatory role (not just in relation to CDAs, but also other areas such as environmental and financial regulation). In practice, however, it is not uncommon for

governments to be part of the negotiations that leads to an agreement and to be assigned obligations under the agreement. This is typically the case in Papua New Guinea, for example. In Australia there are several instances of State Governments being parties to land use agreements between mining companies and traditional owners, although the Government's role and commitments are usually more circumscribed than that of the company. In Canada, the Diavik Diamond Project Socio-Economic Monitoring Agreement includes the Government of the North West Territories as a signatory.

From a good practice perspective, the decision on whether to include government in the CDA as a formal party should ideally be a matter for the developer and the qualified communities to decide, rather than

government imposing a role for itself. If community trust of government is low, involving the State in the process will make reaching agreement much more difficult (see text box). Conversely, if government can 'bring items to the table' such as financial support and commitments to deliver hard or soft infrastructure, their presence is likely to be welcomed by the other parties, more often than not.

Governments as Enablers

One of the most important roles that national and sub-national governments can play is to create an enabling environment that facilitates the negotiation and implementation of CDAs.

Given the issues of capacity which have been discussed in this paper, and the widely varying social and geographical contexts in which resource projects may be established, proposals to mandate CDAs and what they should contain need to be viewed with some caution. However, there is

Outlining Government Involvement in CDA

The Sakhalin Indigenous Minorities Development Plan explicitly recognises the importance of oblast and municipal governmental support in implementing the Plan and its social development programmes. Though the collaboration would need to be developed directly in partnership with the government authority, the SIMDP outlines key areas in which governmental bodies may provide advisory assistance. For example, the Plan identifies the Department of Culture, Education and Health as a potential partner who can provide advice and assistance in implementing and monitoring projects such as educational scholarships and museum and library upgrades.

Source: Sakhalin Indigenous Minorities Development Plan, (2006)

Deciding whether to include government

When the developers were renegotiating with the communities of the Tintaya Copper Mine, the issue of government involvement was addressed. The community members did not trust central government and suspected that the Ministry would be biased towards the company interest. Respecting the preferences of the community, Peru's Ministry of Energy and Mines was excluded from participating in the Dialogue Roundtable.

Source: BG Group (2010)

certainly value in creating a legal mechanism for registering agreements and for laying out basic conditions which must be met if the parties wish to use this process (for example, requiring evidence of broad community engagement).

Other actions that governments can take under the heading of 'enabling' include:

- providing resources, such as an independent mediation agency, to assist parties to reach agreement and to resolve disputes that may arise in relation to the interpretation and implementation of CDAs.
- funding information and advice services that can be accessed by communities who are engaging with resource companies
- supporting other community capacity building initiatives, such as training, governance and financial management.
- participating in agreement governance processes as an independent party.

At a more general level, governments need to show respect for the agreement and work through agreed processes wherever practical. 'Cutting deals' with developers to enable them to circumvent agreement commitments – or giving into community demands to provide more than what was agreed to – will quickly undermine the integrity of the CDA.

Local level government

The issues around the role of local government in CDAs differ somewhat from those that arise in relation to national and sub-national government, as local authorities are typically much closer to the qualified communities, and have more circumscribed responsibilities, than are other levels of government. Potential roles local level government include acting as:

- a *representative* of the qualified communities
- a *participant* in governance structures, such as advisory and monitoring committees
- a *partner* in the *delivery* of programs that form part of, or are aligned with, the CDA

Whether it makes sense for a local authority to act as a representative of the community in the CDA process will, again, depend on the circumstances. In situations where the primary qualified community are landowners (as is typically the case in Melanesia, Canada and Australia) landowners will usually prefer to work through other representative structures, such as tribal councils and landowner organisations. In other situations where qualified communities are defined more in terms of geography, rather than through their connection to the land, community members may be comfortable about having their interests represented by the local authority; although this will also depend on the degree of legitimacy that this entity has in the eyes of local people. A middle ground may be to involve local government as a representative, but also to include other groups and organisations which have some status in the community.

Partnering with local authorities in the delivery of community projects can be effective way of building local capacity (see previous section) and of paving the way for long-term sustainability of community projects. If sufficient capacity exists, local authorities can also play a useful role in monitoring the operation of the CDA and ensuring that all parties to an agreement are held accountable for their responsibilities,

#

References

- (2008). "Ok Tedi Community Mine Continuation Agreement ", from <http://www.oktedi.com/community-and-environment/community/community-mine-continuation-agreements>.
- (2009) "CASE STUDY: Barrick Partners with Chilean NGOs to Support Housing, Education and Health Initiatives." ICMM, 9 Mar. 2009. Web. <<http://www.icmm.com/page/12797/barrick-partners-with-chilean-ngos-to-support-housing-education-and-health-initiatives>>.
- Argyle Diamonds (2005). *Breaking New Ground*. Perth: 24 p.
- Ausland, Aaron and Tonn, Gerhard (2010). "Partnering for Local Development: An Independent Assessment of a Unique Corporate Social Responsibility and Community Relations Strategy." Barrick Gold Corporation, 22p.
- Bainton, Nicholas A. *The Lihir Destiny: Cultural Responses to Mining in Melanesia*. Canberra, A.C.T.: ANU E, 2010.
- Environmental Resource Management (2010). *Mining Community Development Agreements- Practical Experiences and Field Studies*. Washington D.C., The World Bank: 89p.
- Gibson, Ginger and O'Fairchealligh, Ciaran (2010). *The IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements*, Toronto, Ginger Gibson, Ciaran O'Fairchealligh, and the Gordon Foundation: 204p.
- International Council on Mining and Metals (2010). *Good Practice Guide: Indigenous Peoples and Mining* London, ICMM: 120p.
- International Council on Mining and Metals and the World Bank (2005). *Community Development Tool Kit* London: 165p.
- International Finance Corporation (1998). *Good Practice Manual: Doing Better Business Through Effective Public Consultation and Disclosure*. Washington D.C.: 74.
- International Finance Corporation (2000). *Investing in People: Sustaining Communities through Improved Business Practice* Washington D.C.: 69.
- International Finance Corporation (2010). *Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets* Washington D.C., IFC: 144.
- Offor, Tim and Sharp, Barbara. *Ok Tedi and Fly River negotiation over compensation: Using the mutual gains approach in multi-party negotiations*. Negotiate Toolkit, IUCN: 10p.
- Sharp, B. and T. Offor (2008). 'Renegotiating a PNG Compensation Agreement: Applying an Informed Consensus Approach.' Canberra: Australian National University, Research School of Pacific and Asian Studies, Resource Management in Asia-Pacific Program (Working Paper 69).
- World Economic Forum (2011). *Research Report: Stakeholder Perceptions and Suggestions*

Responsible Minerals Development Initiative 2010. Coligny/Geneva: 79.

"Tintaya, Peru | Oxfam Australia." *Our Work with Communities*. Oxfam Australia. Web.
<<http://www.oxfam.org.au/explore/mining/our-work-with-communities/tintaya-peru>>.

The Minerals Law of Mongolia (2006)

<<http://www.miningmongolia.mn/download/mineralslaw.pdf>>

Agreements

Ahafo Mine Local Community and Newmont Ghana Gold Limited (2008). "Ahafo Local Employment Agreement": 14p.

Ahafo Mine Local Community and Newmont Ghana Gold Limited (2008). "Ahafo Social Responsibility Agreement." 28p.

Argyle Diamond Limited and Argyle Diamond Mines Pty Limited, Traditional Owners (2004). "Argyle Participation Agreement". Perth, Freehill: 181.

Diavik Diamond Mines Inc., The Government of the Northwest Territories, and Aboriginal Signatories and Parties, (1999). Diavik Diamonds Project Socio-Economic Monitoring Agreement: 42p.

Newmont Ahafo Development Foundation and Newmont Ghana Gold Limited (2008). "Ahafo Development Foundation Agreement": 20p.

Sakhalin Energy Investment Company (2006). "Sakhalin Indigenous Minorities Development Plan: First Five-Year Plan (2006-2010)." 210.

Abbreviations List

BHP – Broken Hill Proprietary Company

CDA – Community Development Agreement

CMCA – Community Mine Continuation Agreement

CSR – Corporate Social Responsibility

CSRM – Centre for Social Responsibility in Mining

IBA – Impact Benefit Agreement

ICMM – International Council on Mining and Metals

IFC – International Finance Corporation

ILUA – Indigenous Land Use Agreement

MoU – Memorandum of Understanding

NGO – Non-Governmental Organisation

OTML – Ok Tedi Mining Limited

PNG – Papua New Guinea

SIMDP – Sakhalin Indigenous Minorities Development Plan

SIMMGF – Sakhalin Indigenous Minorities Mini-Grant Fund

SWALSC – South West Aboriginal Land and Sea Council

TO – Traditional Owner

List of Tables and Figures

Tables

Table 1: Potential Benefits of CDAs **pg. 8**

Table 2: Capacity Requirements for CDAs **pg. 23**

Table 3: Questions to Ask to Assess Capacity **pg. 24**

Table 4: Potential Actions to take to build local program delivery capacity **pg. 29**

Figures

Figure 1: Roles and Responsibilities of Key Stakeholders **pg. 32**

Case Study A: Ahafo Social Responsibility Agreement

In 2008, Newmont Ghana Gold Company entered into a formal agreement with the Ahafo Mine Local Community, which included 10 community towns in two districts, Asutifi District and Tano North District, in the Brong Ahafo Region of central western Ghana. The Ahafo Gold Project is situated on a lease of about 720 sq. km. Construction began in the southern half of the mine lease land in 2004 followed by mining in 2006. Discussions with community members and other stakeholders began after 2005, which resulted in the Ahafo Social Responsibility Agreement.

The agreement, signed in 2008, includes local employment quotas, training and human development opportunities, provisions for social amenities and the safeguarding of cultural heritage. Also included in this agreement have been provisions for the creation of a Social Responsibility Forum, which serves as the negotiating and governing body for the general agreement, and a Development Foundation, which serves to fund sustainable development projects in the community.

The Ahafo Social Responsibility Agreement is of particular interest because of its voluntary nature and its multi-stakeholder approach. Following a commitment by Newmont to create and contribute to a Community Development Fund and with no legal regulations or restrictions to follow, Newmont and the Nananom (the collective word for the local chiefs) decided to form a forum to discuss, deliberate and develop an agreement on how to manage the Fund. The resulting Ahafo Social Responsibility Forum engages broadly with all aspects of the community as well as different levels of government, community organisations and the company. The cooperative and collective work effort of Newmont and the Ahafo Mine Local Community serves as an exemplar of a good practice working relationship between the company and its stakeholders in formulating a CDA.

Defining Community

For the purposes of this agreement, the Ahafo Mine Local Community has been defined as community towns that are physically located on the Mining Lease within the operational area or within the Mining Lease area under active exploration and community/traditional areas that have a significant amount of its traditional land covered by the Mining Lease. The composition of the Ahafo Mine Local Community is reassessed annually to include community towns based on updated maps. Recognising that communities are not static, the definition of community is flexible to accommodate changes over time.

Community Engagement and the Social Responsibility Forum

As a result of Newmont's global commitment to sustainable development, in 2005 Newmont committed US\$1 per ounce of gold sold and one percent of net annual profits for a community development fund in Ahafo. The local chiefs, leaders of local district leaders, and Newmont agreed to collectively form a Social Responsibility Forum in order to provide the community the opportunity to participate in the Company's decisions and plans, deliberate on issues of mutual interest and decide on how the Community Development Fund is to be allocated. An important first step after

creating the fund was to establish good working relations through commitments to trust, tolerance, patience; and transparency amongst all members of the forum. These promises were solidified into a Memorandum of Commitment, signed in 2006.

Social Responsibility Forum

Formed in 2006, the forum was created to provide a mechanism for collective discussion and decision-making. As a result of over 20 meetings in 2 years, the forum developed the Social Responsibility Agreement in which the forum was delegated the authority to create committees and assign functions to them, establish rules, by-laws and regulations to enforce implementation, and resolve disputes and complaints. Engaging with a breadth of relevant stakeholders, the forum consists of 55 members and an independent monitor and co-monitor. Membership includes:

- regional Minister for Brong Ahafo Region
- General Manager, Environ & Social Responsibility of Ahafo Mine
- External Affairs Manager of Ahafo Mine
- External Affairs Superintendent of Ahafo Mine
- 3 members of Parliament within the 2 districts
- 2 District Chief Executives
- 2 presiding Members of the District Assemblies
- the Chiefs and one subject from each community town nominated by chief
- 2 Chief Farmers, one from each District
- 6 reps of women groups. 3 from each district
- 10 youth representatives, 1 from each community town
- 2 NGO reps one from each district
- 2 Farmers Representatives one from each District
- Secretary of Forum, nominated by Moderator and approved by Forum.

In addition to overseeing the development and implementation of the agreement, the Forum assists with conflict-resolution, agreement review and amendment and the management of the Community Development Foundation.

The Forum is committed to work with the company to help build capacity by providing training for people who will participate in the different aspects of conflict identification, management and resolution. The agreement also outlines procedures for the forum to review and amend the agreement and for any conflicts and disputes to be submitted and reviewed.

Scheduling

The forum holds regular meetings at least twice a year and has a standing committee to meet in the interim in cases of emergencies. Elected Members hold fixed term appointments of five year terms with a maximum of 10 years in office. The procedure for election and the details of the scheduling of regular and emergency meetings are all described in the Social Responsibility Agreement.

Communication

Throughout the process, community communications has played a major role in facilitating open communication and transparency between the Forum, Newmont and the wider community. The Agreement also describes how announcements and comments should be transmitted in a variety of mediums such as informational leaflets, interactive radio, comment sheets, TV shows, street announcement, and feedback sessions. The Social Responsibility Forum utilise multiple avenues to communicate regularly with the local community, maintaining transparency and promoting trust. The Agreement also provides avenues by which the community can communicate to the Forum

Key Findings:

- The formulation of the forum and its multi-stakeholder, inclusive membership has helped to make the Social Responsibility Agreement a collective effort with all parties sharing equal responsibility and involvement.
- The Social Responsibility Agreement and its subsidiary agreements are written very clearly and directly including background information, principles, definitions, aims and objectives.

Sources:

Ahafo Mine Local Community and Newmont Ghana Gold Limited (2008). "Ahafo Social Responsibility Agreement." 28p.

Baffoe, Steve (2008, June). *Newmont Ahafo Social Responsibility Forum – CSR walking the talk A Case Study*. PowerPoint Slides.

"The Ahafo Social Responsibility Forum (ASRF)." *Newmont Ghana*. Web.

<http://www.newmontghana.com/index.php?option=com_content&task=section&id=18&Itemid=40>

Case Study B: Argyle Diamond Mine Participation Agreement

Argyle Diamonds, owned and operated by Rio Tinto, currently operates an open-pit mine in the East Kimberley region of northern Western Australia. The Argyle Mine Lease area is located on the traditional country of the Miriwung, Gidja, Malignin and Woolah peoples, composed of five estate groups: Warmun, Doon Doon, Bow River, Mandangala and Frog Hollow.

Argyle Diamond had a 'Good Neighbour Agreement' with the local indigenous communities dating back to 1980, which was heavily criticised. In response to changing legislation surrounding native title claims in Australia and a renewed commitment to community investment, Argyle entered into a Participation Agreement with the local indigenous communities in 2004. The Participation Agreement was registered by the Native Title Tribunal of Australia in 2005 as an Indigenous Land Use Agreement (ILUA).

Recognising that ILUAs often restrict companies and communities and can be very difficult to amend, the Participation Agreement also includes a Management Plan, a subsidiary agreement that incorporates greater flexibility in how the agreement is engaged and provides guidelines on other important community issues not directly addressed in the ILUA. The Management Plan addresses the following issues: land rights, income generation, employment and contracting opportunities, land management and indigenous site protection. As part of their revised strategy for community engagement, the company frames its relationship with the community in terms of "tenancy", seeing the qualified community as "landlords". As such, recognising that the indigenous community hold primary ownership of the land and working towards handing the land back to Traditional Owners is pivotal to the agreement.

Traditional Owner Relationship Committee

One of the major components of the Participation Agreement is the creation of the Relationship Committee. The committee consists of four Argyle representatives and 26 Traditional Owner (TO) representatives, from six estate groups of the Mine Lease Area. Representatives serve on the committee for the length of the agreement unless all other members find a representative unsuitable unanimously. Establishment of the Relationship Committee demonstrates a commitment by the parties to the agreement to honour and empower the viewpoint of the Traditional Owners in influencing the Management Plans that affect their communities. This is a direct reflection of their overarching principle of the community as their 'landlords'.

The role of the committee is to monitor the implementation of Management Plans, make recommendation to the parties as to how to improve implementation, conduct a review of each Management Plan, provide reports annually, identify employment opportunities, make recommendations for the company to develop career paths, promote participation in annual tour of the mine, and set time frames for negotiations between Argyle and the TOs. The Committee meets quarterly and a notice must be published in advance of the meeting details, its agenda and any supporting information. To communicate the decisions to the broader community, The Agreement

specifies the employment of an Executive Officer to serve as a communications liaison for the Relationship Committee, managing all announcements, concerns and disputes from the community.

Capacity-Building in the Management Plan Agreement

The Participation Agreement includes several clauses relating to the issue of capacity –building. Addressing the capacity needs of the community is important for ensuring that the agreement is manageable by all parties. The Participation Agreement engages with capacity-building and training in two major areas.

Firstly, it contains a clause that provides training for every representative on the Relationship Committee to ensure that he/she is capable of fulfilling their responsibilities. Key capabilities include understandings of the Agreement, of Argyle, and of the Relationship Committee in addition to the ability to comprehend and assess financial statements and reports. To facilitate a better understanding of the Agreement, summary boxes written in plain English, as well as a video, are included to make the legal and technical language of the agreement more accessible. As additional support systems, the agreement establishes a Secretariat, provided for and staffed by Argyle, to assist the Relationship Committee in facilitating meetings, assisting TO representatives to participate in the committee, conducting informative meetings with the local indigenous communities and overall, ensuring the committee operates properly. The Agreement not only provides training for the TO representatives on the committee but also for all Traditional Owners to assist them in participating in the agreement. This includes organisational and managerial support to TOs in their engagement with Argyle and in fulfilling the agreement and also provisions for assistance to the trustees of the Trust in managing community funds.

Recognising the primacy of the local indigenous viewpoint, the agreement includes a mechanism for cross-cultural training for Argyle employees to better understand the community they are working with and to improve community engagement. Argyle will provide training for up to 20 TOs to deliver cross-cultural content under Rio Tinto policies and training. The content of the cross-cultural training is developed in consultations between Argyle and the Relationship Committee. The aim is to build the capacity of company workers to understand the ways and beliefs of the local indigenous people to strengthen the two-way communication and engagement.

Key Findings:

- Factoring in a degree of flexibility is important for agreements to adjust with changing trends and circumstances and have longevity. Recognising this, Argyle developed with local TOs a Management Plan Agreement to accompany the ILUA to address how the company and the community are to work together.
- The Participation Agreement demonstrates a concerted effort to ensure mutual understanding and communication between the company and the community. Argyle provides for training of TO representatives to the committee and provides support mechanisms for the greater community as well. Argyle employees, in turn, undergo cross-cultural training to build capacity on the company side to understand the perspective of the TOs.

Sources:

Argyle Diamond Limited and Argyle Diamond Mines Pty Limited, Traditional Owners (2004). "Argyle Participation Agreement". Perth, Freehill: 181.

Argyle Diamond Limited (2005). "Breaking New Ground". Perth: 24 p.

Case Study C: Sakhalin Indigenous Minorities Development Plan

Located on Sakhalin Island off the far-east shore of Russia, the Sakhalin II is an integrated oil and gas project developing two energy fields for crude oil and natural gas. Ownership of Sakhalin Energy Investment Company (SEIC), the operator of the project, is shared amongst Gazprom, Shell, Mitsui and Mitsubishi. Production began offshore in 1999.

Sakhalin Island is home to about 3,500 indigenous people from four recognised ethnic groups: the Nivkh; the Uilta (also known as the Oroks); the Evenk; and the Nanai. The project not only disrupts the community space of these indigenous groups but also impacts on their traditional practices of reindeer herding, fishing, gathering and hunting. In Russia, there is some regulatory framework around recognising indigenous people and their rights; however, the system is underdeveloped and as such, many of the indigenous groups on Sakhalin had very little legal protection or recognition.

Initially, SEIC implemented a programme of compensation for direct impacts to affected communities however this was met with heavy resistance and criticism. The indigenous communities were dissatisfied with the way in which they were engaged and were concerned about livelihood impacts that the company had not considered. Responding to protests in 2005, SEIC re-engaged with the indigenous community to address their grievances, which developed into a more inclusive agreement, the Sakhalin Indigenous Minorities Development Plan (SIMDP).

Re-engaging and Renegotiating

One of the first matters to consider was who to engage with in re-negotiating the agreement. Previously, SEIC had focused on only those communities that were directly impacted, which were determined to be the reindeer herders. In their consultation process for renegotiating the agreement, SEIC decided to include all the indigenous communities of the island, in order to repair the distrust that had developed within the community. Other stakeholders consulted include Oblast officials (regional government), other oil company operators, NGOs, and social development and indigenous experts.

For the purposes of the agreement, SEIC engaged with the community officially through the regional representative body of authorised representatives called the Sakhalin Indigenous Minorities' Council, which was elected by the Sakhalin Indigenous Peoples and served as the representative party of the community. Local government authorities, from the Sakhalin Oblast Administration (SOA), were also included in consultation and in the implementation of the Plan.

In developing the SIMDP, the company emphasized the importance of the community determining the content and structure of the plan for themselves, with the role of company being to provide assistance in this process. To achieve this, a Working Group was formed consisting of equal membership of company and indigenous representatives, which toured the island visiting each district to gather community input on impacts and desired development outcomes. To keep expectations reasonable and to provide a specific scope to the Plan, the committee was responsible

for receiving community suggestions and prioritising demands. The community consultation process took nearly a year but resulted in an outline of the Plan that more accurately reflected the needs of the indigenous community.

The Sakhalin Indigenous Minorities Development Plan

The SIMDP focuses on the key areas, which were determined from the community consultation: mitigation and social development. The Plan specifies that mitigation measures outlined in the SIMDP apply to only the communities that reside in the Project Area (which is defined and mapped in the document) who experience direct impacts from operations. For example, to address livelihood impacts on reindeer-herders, measures are in place to monitor the quality of life of affected families and to offer supplemental assistance if needed. Benefit-sharing measures, however, are stipulated to apply to all Project Affected Peoples, which is defined as all the indigenous communities on the Sakhalin Island. For example, the Social Development Programme sponsors 140 scholarships available to all Sakhalin indigenous youth. By providing a specific scope to the SIMDP and clearly defining the beneficiaries, the SIMDP ensures that the indigenous community members receive benefits appropriate to their level of impact and that expectations are properly managed.

To build local indigenous capacity to be able to implement the SIMDP, the Plan provides for 10% of its budget to fund small grants. The Sakhalin Indigenous Minorities Mini-Grant Fund (SIMMGF) is the primary responsibility of the Sakhalin Indigenous Minorities' Council and other indigenous peoples' organisations who authorise grant approvals. The implementation, governance and management of the SIMMGF is intended to serve as training for the indigenous peoples to eventually be able to govern, implement and control the overall SIMDP and its framework on their own. The management of the SIMMGF also includes a range of training opportunities and advisory services such as:

- A sustainable development advisor to bring international best practice experiences to the committee overseeing the SIMMGF
- A sustainable development advisor to bring Russian and Sakhalin best practice experiences to the committee overseeing the SIMMGF
- A series of business management workshops for Indigenous Peoples' Organisations (IPOs) to provide organizational management training
- Training for IPOs and indigenous activists in monitoring
- Training for IPOs and indigenous activities in grievance procedures

Key Findings:

- SEIC recognises its role in broader community development by engaging with all indigenous minority groups of the Sakhalin Island, rather than solely those who are directly impacted, in developing the SIMDP. This acknowledges that impacts are not only environmental and physical but can also be social, intangible and cultural.
- Building local capacity by allowing community organisations to develop, manage and maintain their own mini-grant fund empowers the local community, with the goal being for it to eventually take over control of the CDA. Placing greater control and decision-making power into the hands of the community members helps to develop their managerial and leadership capacity.

Sources:

Based on a report prepared by Synergy Global Consulting for BG Group

Sakhalin Energy Investment Company (2006). "Sakhalin Indigenous Minorities Development Plan: First Five-Year Plan (2006-2010)." 210.