

WHEN OIL, GAS OR MINING ARRIVES IN YOUR AREA

PRACTICAL GUIDE FOR COMMUNITIES, CIVIL SOCIETY AND LOCAL
GOVERNMENT ON THE SOCIAL ASPECTS OF OIL, GAS AND MINING

FOREWORD

Oil, gas and mining projects, given their scale, intensity and duration, have a profound impact on local communities, their health, safety and environment, economic livelihoods, and social relations. With many of these projects increasingly taking place in so-called ‘fragile states’ and/or conflict-affected environments that experience serious problems with their regulatory framework, revenue management and governance capacities, the risk of a ‘resource curse’ is high in most of these places.

Institutional and regulatory reform can help reduce this risk. However, experience shows that even if laws, regulations and management systems are in place, the daily reality of political interference, corruption and other forms of ‘elite capture’ in countries such as South Sudan, DRC, Nigeria, Kenya, Afghanistan and other countries where Cordaid is active, often means that oil, gas and mining projects do not play their foreseen role as ‘kick starters’ of the local economy. On the contrary, local communities are often faced with the negative impacts of these projects in the form of pollution, social disruption, human rights abuse and disturbed local markets.

With little or no access to relevant information and technical advice, limited public participation and weak organization, local communities confronted with the arrival of oil, gas and mining companies often cannot realistically assess the potential risks or advantages that a project might bring to their community. As a result, they are unable to engage effectively and in a timely manner with government and companies to ensure that the project becomes beneficial to their community. If subsequent negative impacts are not adequately redressed, and if benefits are unevenly distributed among different groups, trust is further undermined and the risk of communal and community-company-government tensions increases. When this occurs over a longer period of time, some community members (e.g. unemployed youth) might in extreme cases resort to the destruction of and violence against company and government installations and personnel (cf. Niger Delta).

At Cordaid, we believe that strengthening local communities through information-sharing, skills development and meaningful, multi-stakeholder dialogue will help to ensure that oil, gas and mining projects, if accepted by the communities, benefit ordinary citizens. Local communities must be enabled to develop and express their own vision for a sustainable future, and to understand the structure of the extractives industry, the national legal and policy framework, and the international normative frameworks and practices. With the support of a strong civil society network, they will then be able to engage more effectively and constructively with companies and government. As a result, social tensions and violent conflict in oil, gas and mining areas can be significantly reduced or even prevented. If also combined with responsible production and transparent and accountable revenue management, oil, gas and mining can bring significant social and economic benefits to the citizens of resource-rich countries.

Overall, this guide aims to help stakeholders to better manage and coordinate the short-term local benefits and contributions that oil, gas and mining projects can bring, with a view to achieving long-term, sustainable development.

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INTRODUCTION TO THE SOCIAL ASPECTS GUIDE

Why this Guide?

With the exception of a few, recent publications there is limited material available for local communities in developing countries who are confronted with oil, gas and mining operations in their areas.¹ Oil, gas and mining companies themselves, mostly through their industry associations (notably ICMM and IPIECA), have developed and use an impressive range of social performance toolkits, handbooks and guidelines to comply with legislation, operationalize international standards and/or guide behavior of company staff in engagement with affected communities. However, most of this reference material is developed from a company perspective, aimed at minimizing or mitigating (corporate) risks and negative impacts, often for use in low- or medium-risk environments, and written in highly technical language.

Often located in remote, underdeveloped locations with poor internet connectivity, local communities affected by oil, gas and mining projects do not have access to such information and generally lack understanding of the nature, process and impact of extractive industries. As a result, local communities are often not aware of their rights, let alone of the overall regulatory framework for extractive projects. They are therefore unable to organize themselves to effectively participate in the design, planning and decision-making process around oil, gas, mining and other large-scale infrastructure projects.

This guide attempts to fill the gap of information by providing an easily understandable source of information for local communities, civil society and local government² representatives that is written from a practical, community perspective.

Objectives

The overall goal of this guide is *to enable local communities affected by oil, gas and mining projects to carry out constructive, peaceful engagement and negotiation with companies and government, with the aim of achieving sustainable development and improved quality of life.*

Key objectives of this guide are:

1. to increase the level of knowledge about the social aspects of oil, gas and mining projects among local community representatives, in particular villagers and pastoralists – including elders, women and youth – as well as civil society and local government representatives;
2. to help local communities and civil society organizations to better understand how to organize themselves and represent their views and interests effectively within a constructive dialogue and negotiation process with government and companies;
3. to provide local communities, civil society and local government representatives with an overview of key sources of information and relevant support organizations for further assistance with regard to constructive community–company engagement.

How to Use the Guide?

This guide focuses primarily on the social aspects of oil, gas and mining projects. The contents and key messages apply to most countries, although differences in legal framework and culture mean that certain aspects might play out differently according to the particular context.

The guide consists of seven chapters, each covering several key questions relevant to local communities, with summary information in the main text and references to further reading at the end of each chapter. The first four chapters provide an overview of the oil, gas and mining industry as well as how it engages with and affects communities. The last three chapters focus on how communities can prepare themselves for engagement, maximize opportunities and work towards preventing conflict.



The structure of the text is based on key questions that communities are known to struggle with, and is accompanied by illustrations. The text is also accompanied by a mascot, 'Madam Mafuta' ('Mrs Oil' in Swahili), who summarizes information on key issues and concepts.

On topics where useful (tested) tools and resource material already exist – for example, on free, prior and informed consent (FPIC) and impact assessment – such material has been reproduced with permission from the original authors. The section on useful resources at the end of the guide lists a number of specialized organizations that provide training and support in these areas as well as other relevant sources of information.

This guide is specifically designed as a resource tool for facilitators, trainers and civil society organizations working with local communities, particularly those with little or no formal education. However, local and national government institutions, and even oil, gas and mining companies may find the guide useful for civic education and community engagement purposes. For it to be used directly by local community representatives, this guide should be translated in the appropriate local languages and the illustrations provided in the guide can be converted to different formats such as posters and cards with simplified messages.

The guide should be read in conjunction with the separate guide on technical aspects of oil and gas published by RTENN and Cordaid earlier in 2016.³

Meaning of 'Community'

The term 'community' is contested and can have different meanings in different contexts. In this guide, 'community' refers to a group of people with a shared (cultural) identity living together in a certain location. Despite the fact that they share the same language, norms and values, communities are rarely homogeneous or unified; in practice, communities consist of various subgroups and individuals with diverse interests and characteristics. This is important to remember when interacting with and assisting communities.

1. EXTRACTIVE INDUSTRY: WHAT IS IT AND WHO IS INVOLVED?

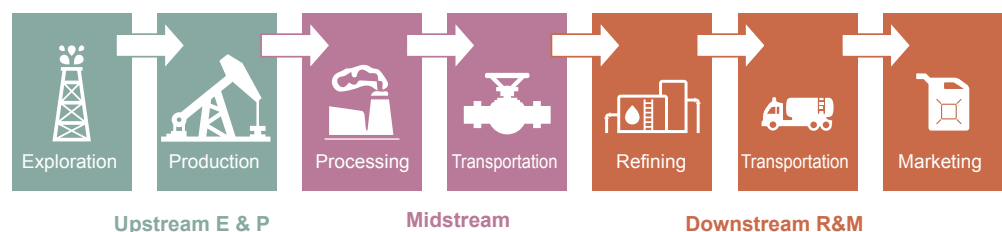
1.1 What is the Extractive Industry and Why Is It Here?

The extractive industry (EI) technically refers to “any processes that involve the extraction of raw materials from the earth to be used by consumers. The extractive industry consists of any operations that remove metals, mineral and aggregates from the earth. Examples of extractive processes include oil and gas extraction, mining, dredging and quarrying.”⁴ In this guide, the extractive industry specifically refers to oil and gas extraction and refining (petroleum industry) as well as metals and mineral extraction and processing (mining industry). The process of finding and extracting oil, gas and minerals can take up to several decades and is usually divided into different phases, including getting permission (‘licensing’), searching for oil, gas and minerals (‘exploration’), building infrastructure (‘development’ or ‘construction’), getting it out of the ground (‘production’), and ending the project and restoring the environment (‘closure and restoration’). Together these phases are known as the ‘life cycle’ of oil, gas and mining.

‘Petroleum’ (oil) is the raw material for many chemical products that we use in our daily lives, including pharmaceuticals, solvents, fertilizers, pesticides and plastics. Petroleum is vital to many industries, and thus is of critical concern for many nations. Similarly, minerals and metals are an important feature of our everyday life, for example as ingredients of building materials and all sorts of tools as well as electrical items such as batteries and cellphones. Despite progress in the development and use of technologies to generate power using renewable, cleaner sources of energy (wind, water, sun), non-renewable sources of energy (including oil, gas and coal) still represent the most important sources of energy,⁵ and are likely to remain so for at least the next few decades.

1.2 The Petroleum Industry

The petroleum industry includes the (upstream) processes of exploration, extraction, processing and transporting by pipelines or tankers as well as the (downstream) processes of refining and marketing of petroleum products. The largest-volume products of the industry are fuel oil and gasoline (petrol).



Traditionally, the upstream sector has experienced a high number of mergers, acquisitions and divestments of oil companies. Practically, this means that a community in a specific area might have to deal with different oil companies active on the same concession area during the lifetime of a project.

Most upstream work in the field or at an oil well is often contracted out to drilling contractors and other oil field service companies. These service companies do specialized work for the main oil companies but are not part of them; i.e. they are different legal and business entities. It is important to realize that in each single oil project there might be more than



INFO: An oil, gas or mining project might involve more than 10-20 companies. Communities should be prepared to engage with this large number of companies with different staff and methods of operation.

10–20 service companies involved, in addition to the main (operating) company. For communities this means they should be prepared to engage with a large number of companies with different staff and methods of operation.



Oil and mining projects involve a broad range of specialists and equipment from different companies.

For more information on the process of oil and gas extraction, see the separate guide on the technical aspects of oil and gas.⁶

1.3 The Mining Industry

Mining involves the extraction of valuable minerals, metals (ores) or other geological materials from the earth. Common minerals and metals include gold, cobalt, titanium, coal, bauxite, copper, oil shale, gemstones such as diamonds, rubies and sapphires, but also limestone and gravel.

In large-scale or *industrial mining*, mineral extraction is mainly done by machines. By contrast, *artisanal or small-scale mining (ASM)* uses minimal or no machinery, relying mainly on physical labor to unearth minerals and metals.

This guide focuses mainly on the social aspects of industrial mining, which is generally more organized and, depending on context and type of company involved, provides communities with greater possibilities of keeping the industry compliant with national laws and international standards. Though there are a few countries that are trying to regulate it, artisanal and small-scale mining (ASM) on the other hand is largely informal and, for affected local communities, difficult to engage with as a sector. Nevertheless, it is important to recognize that in many cases ASM provides an important source of (subsistence) income for poor local communities, albeit often at considerable cost in terms of harm to health, safety, human rights and the environment.⁷

Depending on where the minerals and metals are located, there are different ways of extracting them, either by removing the soil and rock overlying the mineral deposit (surface mining) or by mining the deposit through shafts and tunnels while keeping the overlying soil and rock in place (underground mining).⁸ In *placer mining*, the raw minerals

(usually diamonds or gold), are mined from sands or gravels in (alluvial) streambeds. Along beaches or sand dunes this is sometimes done with a dredge that either shovels or sucks up material from the bottom. In *open-cast* (or *open-pit*) *mining*, ore (mineral-rich rock such as iron ore) is mined downwards on successive step-like ‘benches’ which slope in towards the center of the pit. This often involves the use of explosives to break up the rock. In *strip mining* the ore (e.g. coal or bauxite) is reached by removing the overlying soil and rock with a dragline (‘scraping’) machine in a flat area or with an augur (‘drilling’) machine or dozer in a mountainous area. In underground mining, machines dig horizontal or sloping tunnels and vertical shafts to access the ore or minerals. For an overview of the most common forms of mining, see the figure below.



Different Types of Mining. Source: Stephen Greb, Kentucky Geological Survey, University of Kentucky.

1.4 What Types of Oil and Gas Companies Are There?

For communities to understand why companies behave in a certain manner, it is important to distinguish between different types of oil companies, each of which has a different business model and therefore way of operating.

The term *super majors* is used to refer to the largest petroleum companies in the world and includes companies such as BP, Chevron, ExxonMobil, ConocoPhillips, Shell, Eni and Total S.A. Smaller companies are termed *majors* and/or *independents*, often specialized in exploration and production only. *Operating companies* (also called *operators*) are those companies that are responsible for the management and day-to-day operations of a particular oil field. Another standard practice is to categorize companies as being either (state-owned) National Oil Companies (NOCs) or International Oil Companies (IOCs). A key difference between the two is that NOCs often control the rights over the largest oil reserves in their country. The largest NOCs, such as Saudi Aramco and National Iranian Oil Company, are significantly bigger in size and financial influence than even the IOC super majors.

Independents, such as Tullow Oil, Kosmos Energy, Ophir Energy and Anadarko, are companies that only explore and/or produce crude oil and natural gas, as much and as quickly as possible. To achieve this, they are sometimes willing to take greater risks by starting projects in areas where other companies are not yet or are no longer working. If they have located and established commercially viable quantities of oil and gas, the independent's

business model may involve looking for a larger company that will buy their license or even buy them up completely. The quality of corporate and operational performance of these companies can vary widely, also according to where they are operating.

By contrast, integrated companies such as Royal Dutch/Shell, BP, Chevron, ExxonMobil and Total focus on both (upstream) exploration and production as well as (downstream) refining and marketing, where the majority of their income is made. Because of their much bigger size and scale as well as the fact that they operate all over the world, there is often a lot of attention and pressure on these companies to work to international standards using best available technologies, no matter where they are working.

1.5 What Types of Mining Companies Are There?⁹

While it is true that mineral exploration and mining can be conducted by individual (artisanal) miners and small-scale (informal) businesses, most modern-day mines require large amounts of money to establish and operate and are therefore run by specialized, multinational companies. Thus, the ‘mining industry’ is actually two sectors, one specializing in exploration for new resources and the other in mining those resources.

The exploration sector is typically made up of individual prospectors and small mineral resource companies. Prospectors are usually the first people to look for minerals in a new area. Anyone can prospect if they have the right permits. Prospectors work for themselves, or for exploration and mining companies. The smaller companies are called *juniors* and are mainly focused on exploration. Such companies often acquire rights to potentially interesting, often untested, mineral-rich areas. However, to develop these areas the juniors rely on financial support (through equity financing and venture capital) and technical resources from other investors. Once they have found a rich mineral deposit, juniors often benefit from entering into a joint venture partnership with, or being bought up, by a major mining company.

Medium-sized or intermediate companies can be owned by international firms or domestic entrepreneurs. They typically focus on the mining of small to medium-sized deposits in one country or region and specialize in a specific mineral or group of minerals. The larger mining companies are called *majors* and almost all are sustained by production from their mining operations. Major companies such as Glencore Xstrata, BHP Billiton, Rio Tinto and Anglo American have the financial and technical capabilities to develop a major mine on their own, from the exploration to the production phase. They are active in multiple countries and are often interested in several types of minerals.



INFO: Exploration companies are generally less inclined to make long-term investments than major (mining) companies. Communities should find out the type of company they are dealing with and develop an engagement strategy accordingly.

As with oil companies, the distinction between the types of mining companies matters for local communities. Junior (exploration) companies tend to move quickly from one place to another in the hope of finding a promising mineral deposit and then selling their stake to the highest bidder. As a result, juniors are generally less inclined to invest in developing long-term relationships with local communities, unlike major mining companies which might stay and invest in a particular area for decades. This varying degree of commitment is something local communities should be aware of, and where possible, factor into their company engagement and negotiation strategy.

1.6 What Types of Service and Subcontracting Companies Are There?

Contract and service provider companies are common in all stages of both the oil and gas and mining industries. At the beginning of projects, some of the first service and subcontracting companies that are hired by an extractives company include:

Geophysical survey companies are hired to help search for the deposits. They do this, for example, by using sound waves (via electricity or explosives) to measure the earth's magnetic fields and properties of rocks and minerals below the surface of the ground.

Drilling companies are hired to provide drilling services. Many communities are surprised that often the company doing the actual drilling is not the oil or mining company itself, but a contractor hired to drill for them.

Logistics companies support the oil or mining exploration project with key supplies and services, usually from the nearest community that has them to offer. Often they are the ones responsible for setting up camps, arranging aircraft and supplies, and providing other services such as security and path-clearing/line-cutting through forested areas.

Consulting companies are hired to conduct necessary studies regarding potential feasibility, project management, and the likely environmental and social impact of the proposed project. They often arrive early and good practice is that they engage the communities prior to any major work being done on the ground. The extractives companies pay the consultants to help them meet national regulations in order to acquire the necessary permits and licenses, and to comply with international standards in order to obtain financing from international lending institutions.

1.7 What is the Role of Government in Working with Extractives Companies?

With most popular attention going to oil and mining companies, it is easy to forget that government has, or at least is supposed to have, important roles when it comes to mineral exploration and production.

First of all, government has a *representative role*, in that (in most countries) it either owns the country's minerals or manages on behalf of its citizens the exploitation of minerals by hiring companies to extract the resources for a specific amount per barrel or tonne. In a few countries (particularly the United States and Canada) minerals belong to the landowners (either individuals or companies) where the minerals are found, and the government only receives a royalty. Nevertheless, in all cases the government has a duty to ensure that the mineral resources are extracted responsibly and that the resulting revenues are managed transparently (for example, by following the principles of the Extractive Industry Transparency Initiative (EITI)).¹⁰

Second, government also has a *regulatory role* in administering oil, gas and mineral claims and providing licenses and/or permits for exploration and resource development activities. Governments are expected to ensure that there is a 'fair and transparent' process for how they grant permissions to companies to engage in mineral exploration and development. Governments are supposed to set the rules for permitting, manage the permitting process, and issue the required permits. The requirement for licenses and permits in the exploration phase varies from country to country, and depending on the type of exploration work being done. Ideally, and in some cases in line with the country's constitution, governments should organize some form of public consultation to allow affected and other interested people to express their views and concerns regarding the proposed project before the license is issued.

Third, country governments and their ministries or departments for mining and petroleum and energy have a *supporting role* in oil, gas and mineral exploration by developing and providing geological maps and reports that guide prospectors and exploration companies to areas with mineral potential. Also, some jurisdictions enable prospectors, through special programmes of training and limited financial support, to promote artisanal mineral exploration.

Governments sometimes *carry out*, but more often *check and approve*, the environmental and social impact assessment process and resulting management or mitigation plans. Most governments have specific regulatory agencies that are mandated to develop guidelines and monitor compliance of oil, gas and mining companies with environmental and social impact regulations.



INFO: Local communities should be aware of government roles and responsibilities and need to hold relevant government agencies and officials accountable for their performance in these areas.

Moreover, in most countries it is a government responsibility to *provide security* in oil, gas and mining areas, not only to company staff, but also to the local communities who live there. In providing security it is critical that government forces as well as private security contractors respect human rights.¹¹

Finally, it is important to emphasize that it is a government responsibility to *deliver basic services* such as water, education, healthcare and infrastructure (including roads and electricity) to its citizens, including in remote areas where oil, gas and mining companies operate.

More Information

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2. WHAT CAN COMMUNITIES EXPECT WHEN ENGAGING WITH OIL, GAS AND MINING COMPANIES?

2.1 What Sort of Company Are We Dealing With?

When oil, gas or minerals are discovered in your area, depending on the size of the resource, many different companies and (foreign) company staff may come. This usually starts with a whole range of service companies and consultancy firms, which are contracted by the exploration and/or production company that holds the oil or mining exploration license(s) in your area. If there is a reasonable chance of finding oil, gas or minerals in your area, then the actual exploration and production company and its staff is likely to establish a more long-term camp or operations base and office.

When engaging with any companies, for communities and/or local civil society organizations (CSOs), the first important thing is to find out which company has acquired the license (and is therefore overall responsible for all operations of the other companies) and what type of company it is you are dealing with. In the case of a service company or consultancy firm, be aware that the company is only responsible for delivery of a very specific task, for example to do the seismic survey or to do a study of the socio-economic situation in the area. Although some of them might hire a few local people (for example as translators or research assistants), these companies do not generally provide much employment or tangible benefits to the local communities in the area. Moreover, when there is a problem with one of the service or consultancy companies, it should be handled by either themselves or referred to the company that contracted them (see also Chapter 7.3 on grievance mechanisms).



For community representatives (in particular those who cannot read) it is not always clear which company office to go to.

When your community is dealing with the actual company that has the legal license to explore for or produce oil, gas or minerals in your area, find out (from the company or relevant government agency) what and how long the license is for exactly. Moreover, communities should be aware that this company does not yet know if it will be in the area just for the exploration phase (1–10 years) or if it will stay longer, for the production phase (20–50 years). This depends on what and how much it finds in the ground and if it can get it out for a reasonable cost and sell it at a good price. Companies will only stay and invest resources in your area if they believe they can make a profit.

It is also important to realize that many of the company workers come from different parts of the country or even other parts of the world, and work in rotational shifts. For example, you will see someone for a month, and then someone else comes to take over that person's task for the next month, after which the original person comes back to take over again. This means that information needs to be shared more than once, often with many different people.

To conclude, it is important to be aware that the companies involved in oil, gas or mining projects are many, that their level of investment and duration of stay depends on their profitability, and that you will often be dealing with many different company staff members with different levels of (technical and local) knowledge and experience. Not all companies have community relations teams whose specific job it is to help keep the community informed and consulted on company activities. It is completely acceptable for you to ask the company who is the key focal person for your community to communicate with, and ask them how they work (see also Chapter 5).

2.2 What is a Good Community-Company Relationship and Why is It Important?

To have what are sometimes called 'good neighbor' relations between a community and company, there must at least be:

- mutual respect;
- open and ongoing communication;
- inclusion of all community groups;
- honesty;
- disclosure of information in a language and format that is understandable to everyone;
- transparency of project exploration and operations, and of their impacts;
- an effective grievance mechanism.

This requires that companies:

- be sensitive to local norms;
- create realistic expectations within communities;
- develop fair conflict resolution mechanisms;
- be ethical and consistent;
- start the engagement process as early as possible and maintain contact throughout;
- disclose and share information that allows communities to make their own decisions regarding the project;
- incorporate community views into the design and operations of the project.

And that communities:

- have an appropriate and functioning internal governance system that represents the community and that has the community's consent to negotiate on its behalf;
- develop, or access, the knowledge and skills to meaningfully participate in the consultation process;
- if the process is fair and transparent, to participate in it without frustrating it.

Most of these points are further elaborated below.



Company workers installing a borehole in a community: an example of 'good neighbor' relations?

A 'social license to operate' (SLTO) refers to the level of acceptance or approval by local communities and stakeholders of companies and their operations.¹² An SLTO is not the same as the formal licensing process organized by the host government. Unlike a formal license, which is fixed for a period of time, the informal SLTO depends on the quality of company–community interactions and can vary from day to day. There are several important reasons why companies want to develop good relations with communities and have a 'social license to operate':¹³

- Boosts reputation, both nationally and internationally;
- Prevents conflict with communities and protecting company resources;
- Facilitates the formal approvals process as it minimizes risks of costly delays due to community opposition;
- Is part of effective and efficient project management;
- Helps to manage risks, reduces closure costs and liabilities;
- Provides access to local workforce and employees;
- Improves relations with (local) employees, resulting in retention and lower recruitment and training costs;
- Gives assurance to stakeholders and investors that the company is acting responsibly and managing risk.



INFO: Communities should clearly outline the need for a 'social license to operate' and propose 'rules of engagement' on how companies should engage and behave, regardless of the minimum requirements set by government regulations.

Conversely, communities benefit from good relations with companies because they help to set the expectations for how companies should engage and behave, regardless of the minimum requirements set by government regulations. By clearly outlining the need for a social license to operate, communities can say to the companies "this is how you will work with us" and even document such 'rules of engagement' in a community protocol (see Chapter 5) or even a more comprehensive Community Development Agreement (CDA) (see Chapter 6).

2.3 How Do Companies Decide Who to Consult With?

In the early stages of a project, companies will often create a stakeholder engagement plan, which identifies who is considered to be an affected party and who is an interested party. An *affected party* is a stakeholder or community that is directly or indirectly affected by the proposed project, either positively or negatively. An *interested party* is a stakeholder or community that is not affected by the proposed project, but may still have an interest in it. The latter includes stakeholders that 1) have knowledge about the impacts of the operation; 2) are a partner in the project, or 3) are part of the broader community and have expressed interest in the project.

Although the stakeholder engagement plan is created by the companies, it often requires approval by the appropriate government ministry. The resulting plan usually details which communities are consulted and often in what order and how frequently. In general, the primary focus of the consultation process will be on the *affected party* – those communities directly or indirectly affected by the project. Nevertheless, it is important to realize that while several communities may be affected by a single private investment, each may be affected differently, and even within communities experiences may vary.¹⁴

2.4 What is the Typical Consultation Process?

The consultation process, as led by the company or government, is different at each stage of the project life cycle. Table 2.1 below provides a general overview of the sort of relationships and levels of engagement companies should ideally have with communities at each stage of a mining project (largely similar for an oil and gas project). Most importantly, it also explains what communities can do themselves.

The experience of many communities is that engagement and the quality of the relationship with the company is often built during the exploration and feasibility stages, and then strongly tested during the construction stage, as this is when impacts are often the severest and most direct. As production continues, the relationship usually stabilizes – although it can be consistently positive or consistently negative. Generally, unless the company is held to account, the relationship starts to fade towards the end of the project as closure becomes the main focus of the company. For more detailed suggestions on how communities can prepare themselves for engagement, see Chapter 5.

Table 2.1 Company/Community Interactions During Mining Project¹⁵

PHASE	DESCRIPTION
Exploration	<ul style="list-style-type: none"> ■ Highly competitive and structured within very short timescales. ■ The nature of the relationship between company and community is established and generally sets the tone of the relationship from then on. This is a challenging time since, in the earliest stages at least, there is an inbuilt mismatch between the interests of communities that want full information disclosure and a long-standing relationship, and the interests of exploration teams who want to keep their data confidential and who will move on if there are no promising prospects for follow-up. ■ Communities expect the companies to notify them before there are any impacts, that there is transparency about who is doing the work, and that companies adhere to the relevant laws and regulations. ■ Communities should start preparing their internal communication structures and try to find out as much as possible about the proposed project from the companies and government agencies, and ask how the consultation process will be organized. When companies are reluctant to share information, communities should emphasize that access to correct information actually prevents the spread of rumours, helps manage expectations and contributes to conflict prevention.

PHASE	DESCRIPTION
Feasibility	<ul style="list-style-type: none"> ■ Extensive technical studies (including environmental and social impact assessments) and consultations with government and local stakeholders. ■ Important opportunities for the companies to engage with local communities to establish, for example, project time line and design scenarios, and a clear understanding of social, environment and development needs and priorities. ■ Communities should insist that companies and government agencies comply with international standards, in particular regarding free, prior and informed consent (FPIC), and should clearly communicate their social, health and environmental concerns. ■ Important opportunities for communities to learn more about the project, develop their own vision, for example in a 'community protocol' (including a definition of "what does success and legacy look like?") and key priorities for how the project can benefit their area and how it can strengthen the overall community. Communities should articulate expectations on company–community interaction ('rules of engagement'), and make suggestions for impact mitigation (e.g. via changes to project design and transport corridors) and livelihood enhancement (via community development agreements and skills training programmes).
Construction	<ul style="list-style-type: none"> ■ Relatively short, but typically intense set of construction activities, potentially with a large and/or temporary workforce. ■ The influx of construction workers can be highly traumatic for the community. This phase often introduces significant cash into the community, sometimes for the first time, with profound impacts – which can be both negative and positive – for the community. ■ Communities should insist that companies and government agencies comply with international standards, in particular on FPIC, land access, resettlement and compensation. ■ Opportunities for employment for those community representatives with the necessary skills and experience as well as business opportunities for those local entrepreneurs and/or cooperatives who have studied the market, know what services company workers need (e.g. catering, hotels, restaurants, transport) and invest their earnings wisely, e.g. by expanding their business activities to meet worker needs. ■ Expectations should be managed: there will be job opportunities, but mainly for (semi-) skilled workers and for a short-term period (typically not more than 3–6 months).
Production	<ul style="list-style-type: none"> ■ Medium- to long-term time scales. Period of greatest company presence and stable activities. ■ Opportunities for companies to implement long-term community development programmes, focusing on locally identified development needs and community participation and stakeholder partnership in programme design, implementation and monitoring. ■ Communities must insist that companies comply with any agreements made, hold government accountable for the transparent management of mineral revenues, push government to take its responsibility for development projects, and monitor and highlight any negative project impacts.
Closure	<ul style="list-style-type: none"> ■ May be according to a long-term plan or may occur prematurely. Need for closure planning throughout the mining project cycle to ensure that projects can survive mine closure. ■ Role of government and local development partners is critically important in planning for closure. ■ Even well-planned and well-implemented closure is likely to cause significant decline in community income and tax base of local government. ■ Communities monitor compliance of company and government responsibilities for implementation of closure plans, in particular with regard to health and safety, and rehabilitation of the environment.
Post-closure	<ul style="list-style-type: none"> ■ Long-term time scale. Includes monitoring of environmental impacts and social conditions following closure. ■ Requires clear allocation of responsibilities for monitoring and rehabilitation regarding any post-closure impacts. ■ Companies supports post-closure alternative income-generation measures and encourage government to sustain the delivery of social services. ■ Communities monitor closed mine site(s) and follow-up with government and companies in case of any remaining or new environmental and social impacts.

2.5 What Are Rights of Communities During the Consultation Process?

The legal rights of communities during the consultation process depend on national laws, and these vary widely from country to country. In some countries the law requires companies to consult communities while in others this is not required, meaning that consultation is an expected good practice or simply that the national government has full decision authority.

Strictly speaking, *free, prior and informed consent* or FPIC – in particular the consent component – is only legally required in cases where a project affects indigenous peoples and/or is part of a country's legislation. In many places (particularly in Africa and Asia) this has led to heated debates on the definition of 'indigenous people'.¹⁶ For companies that work with funding from the International Finance Corporation (IFC), Performance Standards 1 and 7 advise a less stringent 'informed consultation and participation' (ICP) approach when dealing with affected communities in high-risk projects; except when those communities comprise indigenous peoples, in which case FPIC is required.¹⁷ Nevertheless, application of the FPIC principles for community consultation are nowadays widely seen as international good practice (see section 2.6 below).



Communities rights are protected by different components of the national legal, regulatory and institutional framework.



INFO: Communities always have the right to express their concerns to the companies or their government officials regarding a project. According to the UN Guiding Principles, states have a duty to protect human rights, businesses have a responsibility to respect human rights, and there should be an effective grievance mechanism.

In any case, communities always have the right to express their concerns to the companies or their government officials regarding a project. In line with the United Nations Guiding Principles on Business and Human Rights (UNGPs), project-affected communities are rights-holders and businesses have a *responsibility to respect human rights*, requiring them to “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur as well as seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.¹⁸ States, on the other hand, have a *duty to protect human rights* by “taking appropriate steps to prevent, investigate, punish and redress [human rights] abuses, within their territory and/or jurisdiction by third parties, including business enterprises, through effective policies, legislation, regulations and adjudication”.¹⁹ Finally, both states and businesses “should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”.²⁰

It is highly recommended that communities learn about the specific government regulations, licensing processes and business standards that companies are expected to adhere to in their countries. Communities can approach their local government office, non-governmental organizations (NGOs), or other organizations for help (see also the list of training and support providers at the end of this guide).

2.6 What Are International Expectations For Consultation With Communities?

Apart from legal requirements, there is a growing consensus on what are good practices for community engagement and consultation.²¹ *Free, prior and informed consent* (FPIC) is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC is written into the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and has since been applied in the extractive industries to communities more generally.

FPIC refers to the following principles for how communities should be engaged:²²

- **Free** from force, intimidation, manipulation, coercion or pressure by any government or company.
- **Prior** to government allocating land and prior to approval of specific projects. Communities must be given enough time to consider the information and make a decision.
- **Informed**; communities must be given all the relevant information in order to make their decision, i.e. to agree to the project or not to agree to it. The information must be in a language that communities can understand. They must have access to independent information, meaning not only from the company or government – they must also have access to experts on law and technical issues, if requested, to help them make their decision.
- **Consent** requires that the people involved in the project allow communities to say ‘yes’ or ‘no’ to the project, at each stage of the project.



INFO: The principle of *free, prior and informed consent* (FPIC) means that a certain community or group has the right to give or withhold its consent to proposed projects.

The purpose of the FPIC principles is to ensure that people are “not coerced, pressured or intimidated in their choices of development”.²³

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decision.	To work directly with the public throughout the process to ensure that public issues and concerns are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and issues are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
EXAMPLE TOOLS	<ul style="list-style-type: none"> • Fact sheets • Websites • Open houses 	<ul style="list-style-type: none"> • Public comment • Focus groups • Surveys • Public meetings 	<ul style="list-style-type: none"> • Workshops • Deliberate polling 	<ul style="list-style-type: none"> • Citizen Advisory committees • Consensus-building • Participatory decision-making 	<ul style="list-style-type: none"> • Citizen juries • Ballots • Delegated decisions

Community consultation or engagement is often equated with public participation, although there are important differences. The so-called ‘public participation spectrum’ (see above) developed by the International Association for Public Participation (IAP2) has become an international benchmark for the various levels of involving the public and communities in decision-making.²⁴

In many countries, there are specific protocols and/or procedures (as part of the constitution or specific laws) that require companies to inform the public and allow the latter to express their views about a planned project. However, in practice community views are often disregarded by decision-makers attempting to use ‘public participation’ to legitimize predetermined outcomes or who are complying with regulatory requirements only in a box-ticking manner. By contrast, genuine community consultation or engagement requires “meaningful interaction and good faith dialogue, with interested parties having a real ability to influence the management of social issues”.²⁵

The notion that engagement and/or consultation with communities should at least be ‘meaningful’ has gradually become part of several international standards, including the previously mentioned United Nations Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines on Multinational Companies as well as the IFC Performance Standards.²⁶ What constitutes ‘meaningful consultation’, however, differs according to the particular standard and to the particular stakeholder group (civil society, company, government). For one of the more comprehensive definitions, which highlights the importance of both process and outcomes, see Box 2.1.

Box 2.1 When is Consultation Meaningful?

“Meaningful consultation is defined as a process involving all project stakeholders, affected peoples, including concerned NGOs, that is explained in a stakeholder participation plan and: (i) begins early and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information understandable and readily accessible to affected people; (iii) is free of intimidation or coercion; (iv) is inclusive and responsive to marginalized groups, with attention to gender; (v) enables incorporation of all relevant views of affected people and other stakeholders into decision-making; (vi) includes persons with disabilities, and (vii) includes a comprehensive discussion of environment and social issues, including benefits.”²⁷

Meaningful community consultation and participatory methods provide many benefits, for all stakeholders.²⁸ In particular, they:

- enable a better understanding of the local values, knowledge and experiences of the different stakeholder groups;
- provide an opportunity to validate data;
- help the affected communities understand the planned intervention and its implications, and thus assist them in planning for the change and to more easily adapt to and cope with the likely changes;
- help resolve conflicts over resource use;
- help enhance the design of the project;
- help win community support for project objectives and for implementation (i.e. a social licence to operate), thus avoiding protest action against the project.²⁹



Illustration: Katie Webber/Oxfam Australia in *Guide to Free, Prior and Informed Consent* (Oxfam, 2014)]

2.7 What Kind of Benefits May Communities Realistically Expect?³⁰

Revenue and non-revenue benefits from an oil, gas or mining project to both governments and communities are often strongly influenced by several factors, for example:

- the size of the oil/gas reserve or mineral deposit;
- the stage or phase of the project (i.e. exploration vs. production);
- the level of financial investment the company has made or is planning to make in the project;
- the size and financial capacity of the oil, gas or mining company;
- the regulatory requirements, expectations and any other agreements with government and potentially affected communities.

Common forms of *revenue benefits*, mainly allocated to central governments, include:

- fees for licenses and permits: these may include licenses to explore, to extend an exploration phase, to drill, to expand a field;
- state share of oil/gas production: from first oil throughout the production phase;
- royalty payments: e.g. derived from fixed price per unit sold;
- petroleum production tax: analogous to royalty payment;
- income tax: throughout the life cycle; IOCs may be taxed on income including corporate income tax, local income tax and personal income tax on expatriate personnel;
- customs duties, value added tax (VAT), payroll taxes, taxes on inputs and imports, likely to be particularly significant during the development phase;
- property tax and stamp duty: land-related taxation, some of which will be one-off at the exploration and construction phases;
- tax on repatriated profits: this might include branch profits tax, dividend tax on non-resident shareholders.

Unlike subnational revenue-sharing, whereby community institutions receive money from central or local government (often as a percentage of company royalty payments), revenue benefits channeled directly from companies to communities are much less common. In some countries, companies can be required to pay certain contributions to community

institutions, such as councils of elders or ad hoc community liaison committees. However, these and other transactions involving payments from companies directly benefiting community leaders are often perceived as bribes and usually reduce the trust between the company and the wider community. For this reason, there is nowadays more focus on the *non-revenue benefits* of oil, gas and mining for communities and the wider population, including:

- job creation and contracting/procuring services from local (qualified) suppliers;
- new infrastructure or improvement of existing infrastructure, including access to roads and electricity;
- better service delivery from government as a result of increased income from taxes and royalties and other extractive industry-related payments;
- social investment in projects or programmes aimed at enhancing community development.



INFO: Employment and business opportunities around oil, gas and mining projects fluctuate sharply and are generally only available for skilled and experienced workers and businessmen/women.

In connection with the last point, companies are strongly encouraged to fund initiatives that are aligned with local development plans and that will support the broader community as a whole, while at the same time encouraging government to take its due responsibility for the delivery of basic services and other development projects.

It is important to remember that benefits to communities are often not present consistently. For example, job opportunities may be high in number during the construction phase, but are significantly reduced once the project is built and operational. This is one of the reasons why resource-rich areas experience patterns of 'boom' (periods of high economic growth and prosperity) and 'bust' (periods of extremely low economic growth and prosperity). Finally, we should not forget that employment and business opportunities are generally only available for those local workers who have the necessary skills and experience, or those local businessmen and businesswomen who can deliver goods and services according to certain (international) quality standards.

2.8 What is Corporate Social Responsibility, Social Performance, Shared Value, Social License to Operate, and Social Investment?

Corporate social responsibility (CSR), social performance (SP), creating shared value (CSV), social license to operate (SLTO), and social investment (SI) are business terms that all refer to the idea that company and community goals are somehow linked and that companies therefore need to make an effort to support communities. Even though these terms are often used interchangeably, each term has a different meaning, and to make it more complicated, is often defined differently by different companies. Generally speaking, however, the terms can be defined as follows:³¹

- *Corporate social responsibility (CSR)*: the idea that a company has a responsibility to contribute to society in a way that goes beyond its responsibility to maximize profit. The term CSR emerged in the 1970s and has for a long time been associated with different types of voluntary contributions and development projects provided by companies for local communities. Though still widely used, the term CSR is nowadays considered somewhat dated as it is seen as too paternalistic in seeing companies as benevolent and communities as weak victims.
- *Creating shared value (CSV)*: a more recent approach that aims to create greater alignment between private sector business objectives and host country and communities' development objectives. This is done by developing local skills, enterprises and infrastructure that simultaneously increase company profitability while improving economic and social conditions for communities. This approach claims to see companies and communities as more equal partners.

- *Social performance (SP)*: the idea that companies in all their operations should strive towards meeting certain international standards (in particular the IFC Performance Standards) for assessing and managing negative social impacts as well as catalysing positive, sustainable development impacts (see Chapter 3).
- *Social license to operate (SLTO)*: when a company has gained and maintained broad-based acceptance or approval from local and/or national stakeholders, including communities, traditional leadership and sometimes also NGOs, for its project or operations. This is different from a company's legal license to operate as a result of obtaining a license from government to start or expand operations.
- *Social investment (SI)*: the voluntary contributions (either in money, staff time or gifts in kind) that bring benefits to communities over and above an operation's core activities.³² In the case of *philanthropic social investment*, sometimes described simply as 'philanthropy', contributions are not tied directly to the project goals (e.g. a company sponsoring a community sports team or providing scholarships to students). By contrast, *strategic social investment* happens when the company supports certain initiatives, for example the refurbishing of a school or the drilling of a borehole, in the specific community area where it operates, either voluntarily or as part of a negotiated agreement with the community over land access or impact mitigation.



Company staff helping with painting a school near a village.

Most companies have a CSR or SI strategy, and communities should request that companies share their social investment strategy with the community. Within this strategy, companies generally have specific criteria regarding the type of projects and/or the types of groups they will or will not fund. However, communities should not just sit and wait for companies to decide what they will fund. Rather, communities should develop their own development plans and priorities. Where needed, communities can ask for assistance from trusted local civil society organizations or independent experts that can be paid by the company to help them develop such plans.

More information

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3. HOW MIGHT OIL, GAS AND MINING ACTIVITIES AFFECT YOUR COMMUNITY?

3.1 Introduction

Change in societies, and therefore also in local communities, is something that happens all the time. Sometimes companies bring new change, sometimes they accelerate change already happening, and sometimes the change is local and sometimes global.³³ Oil, gas and mining activities affect people and the environment in communities in different ways.

Some impacts of the extractive industry can be positive, such as: employment and business opportunities, access to housing, healthcare, water, fuel, electricity, sewage and waste disposal, and multiplier effects for the local economy. But these positive impacts are not guaranteed. In order to have positive changes communities and local leaders must work together through consultation and partnership with the government and the companies. It is not always possible to predict the consequences of the extractive industries on communities, so communities need to be prepared to work with companies to identify impacts – and prevent any negative ones – as they arise.



INFO: Governments must ensure company compliance with relevant laws and regulations, particularly those relating to environmental and social protection.

Potential negative impacts resulting from extractive projects could include the degradation of the environment and impacts on local culture and ways of life. Poor management of extractive projects on the part of not only companies, but also government and local leaders can have long-term negative impacts on communities. In some communities the impact of the extractive industry has been devastating. Governments must have in place, and ensure company compliance with, the relevant laws and regulations, particularly those relating to environmental and social protection. Before starting, companies should carry out a so-called ‘due diligence’ to identify potential negative impacts of their project and take necessary measures to mitigate such impacts. Communities, in order to ensure their protection, must organize themselves and work together to ensure that their views are communicated clearly to the companies and government.

3.2 What are Potential Impacts Associated with Oil, Gas and Mining Activities?

As noted above, impacts can be positive or negative from the standpoint of a community or individual community representatives. In fact, the same impact that has a positive impact in one community may have a negative impact in another. For example, in-migration to one community may lead to economic growth, new jobs and educational opportunities. In another community, in-migration may lead to increased drug abuse and crime. Table 3.1 below provides a non-exhaustive list of potential impacts of an oil, gas or mining project. Not all impacts will apply to any one community, and whether they are positive or negative often depends on the specific context.

3.3 What Are the Different Types of Impact Assessment?

The purpose of an impact assessment is to:

1. identify the anticipated or actual impacts of a development intervention;
2. assess the current conditions and establish a baseline before impacts take place;
3. determine the level of predicted impact;
4. develop mitigation strategies to reduce the impacts of the intervention;
5. determine long-term cumulative impacts and significance.

Table 3.1 Overview of Potential Social and Environmental Impacts of Oil, Gas and Mining

TYPE OF IMPACT	POTENTIALLY POSITIVE EFFECTS	POTENTIALLY NEGATIVE EFFECTS
Health	<ul style="list-style-type: none"> ■ New healthcare facilities ■ Increased access to medication, vaccination, and health services ■ Improved health awareness ■ Increased capacity of local healthcare workers 	<ul style="list-style-type: none"> ■ Increased prevalence of diseases (including HIV/Aids) from in-migration ■ Increased illness due to land, water and/or air pollution ■ Health risks associated with water, air and land contamination
Culture and Traditional Way of Life	<ul style="list-style-type: none"> ■ Community works together to preserve traditional way of life of community ■ Cultural heritage sites can be improved or receive better access roads, protection 	<ul style="list-style-type: none"> ■ Reduced land access and loss of ability to hunt and gather or live traditional way of life, leading to malnutrition and dependency ■ Damage to sites of cultural and spiritual significance
Community Impacts	<ul style="list-style-type: none"> ■ Increased access to services including schools, health facilities, water & sanitation ■ Increased transport and communication access to other communities 	<ul style="list-style-type: none"> ■ Increase in crime and disorder including potential alcoholism, drug use and sexual exploitation ■ Increasing inequality and community tension due to uneven distribution of resources ■ Bribery and corruption ■ Increased conflict over resources
Economic Impacts	<ul style="list-style-type: none"> ■ Direct employment for community members ■ Indirect employment due to economic growth and contracting/business opportunities ■ Investment into the local community from the companies ■ Enhanced skills and training of community members 	<ul style="list-style-type: none"> ■ Higher costs of local goods and housing ■ Loss or change of traditional livelihoods ■ Reduced food or fish production due to environmental degradation or limited access (for example, during seismic surveys)
Environmental Impacts	<ul style="list-style-type: none"> ■ More resources for protection of natural parks, research and conservation of endangered species. 	<ul style="list-style-type: none"> ■ Soil and water degradation ■ Noise and air pollution ■ Loss of ecosystems ■ Impacts on wildlife and habitats ■ Increased traffic

There are several different types of impact assessments that can be conducted, including the following:

- *Environmental Impact Assessment (EIA)* – focused specifically on impacts on the environment, including: land, water, air, wildlife, birds, inorganic and organic materials.
- *Social/Socio-Economic Impact Assessment (SIA/SEIA)* – includes the social impacts on the affected population including economic, education, social and community relationships, and infrastructure impacts.
- *Health Impact Assessment (HIA)* – examines the impacts of a project on the health of the population/affected community including potential for disease and positive health outcomes such as increased access to health resources and capacity development of local health workers.
- *Human Rights Impact Assessment (HRIA/HURIA)* – measures the proposed project's impact on the human rights of the population/community. This includes the potential human rights impacts of a business operation and its entire value chain, capital project, government policy, or trade agreement. HRIAs/HURIAs are often part of a broader process of *human rights due diligence* undertaken by companies to identify, prevent, mitigate and account for human rights impacts resulting from business operations, particularly in the case of conflict-sensitive areas, involvement of vulnerable and marginalized groups, and impacts related to previous operators (legacy impacts), other business partners (value chain impacts) and/or operators in the same area (cumulative impacts).³⁴ Arguing that companies tend to focus more on company business risks rather than human rights for communities, some NGOs are advocating the use of community-based HRIAs to enable communities to present their own views.³⁵

- *Gender Impact Assessment* – examines the impact of the project on women, men, boys and girls, and on the economic and social relations between them. A gender impact assessment should be undertaken as part of or alongside social and human rights impact assessments.³⁶
- *Integrated Impact Assessment* – this can include a combination of two or more of the above types of impact assessments. Given the interconnectedness of the issues, it is becoming increasingly common for companies to do integrated environmental, social and health impact assessments (ESHIA).³⁷



Company staff informing community representatives while consultants are taking water samples and land measurements.

According to international standards, a company should conduct a comprehensive environmental *and* social impact assessment (ESIA) before starting an extractive project. In practice, however, companies may not always conduct a social impact assessment, for example if they are not required to do so by the national government. Nevertheless, social impact assessments (SIAs) are widely recognized as a useful tool for identifying, analyzing and managing the social risks and impacts of projects. Therefore, communities and civil society organizations should insist that it's worthwhile for the company to seriously invest in this process. After all, if done properly a SIA not only provides communities and civil society with an opportunity to share their concerns and suggestions for improvement, but also helps the company to “identify potential [problematic] issues at an early stage, thereby reducing likely future costs in the form of litigation, delays to approval, managing protest actions or addressing violence against staff and/or property, and business losses from reputational harm”.³⁸



Consultants and other company advisors presenting the summary findings of an environmental and social impact assessment to community members.

3.4 How Are Impacts Assessed and Addressed?

In most countries, ESIA's are conducted by private consultants. Though they are typically paid by the company that is developing the project, the consultants are supposed to be independent third parties, whose views are not biased towards company interests. It is the role of governments to ensure that the final assessment reports meet the regulatory requirements as well as international standards of independence, quality and inclusivity. The flowchart below describes the different phases and components of an impact assessment (in this case a social impact assessment):

The Phases of a Social Impact Assessment (adapted from IAIA)³⁹



Affected communities, civil society organizations and other stakeholders will be contacted by the ESIA team(s) at different times, usually at least once during the first (community profiling and scoping) phase, again during the second (impact assessment) phase, several times during the third (mitigation strategy development) phase, and usually again during the final (monitoring and evaluation) phase.

After all impacts have been assessed, it is necessary to prioritize them for action. For this, companies often use a *risk assessment matrix*, which gives a consequence and likelihood score for each risk identified (see figure below).

Risk Assessment Framework (adapted from IAIA)⁴⁰

		CONSEQUENCE LEVEL				
		1	2	3	4	5
Likelihood level	Description	Insignificant	Minor	Moderate	Major	Catastrophic
A	Almost certain	A1	A2	A3	A4	A5
B	Likely	B1	B2	B3	B4	B5
C	Possible	C1	C2	C3	C4	C5
D	Unlikely	D1	D2	D3	D4	D5
E	Rare	E1	E2	E3	E4	E5

Risk rating: ■ Low ■ Moderate ■ High ■ Extreme

Communities can themselves make a similar risk assessment, presenting their own perspective on the likelihood and consequences of social and environmental risks connected to a particular project.

After they are categorized in the different risk categories, the impacts should be either avoided, reduced, repaired, compensated in kind, or compensated by other means, depending on the severity of the impact and the particular context. For an overview of these different, so-called *mitigation strategies*, see figure below.

Mitigation Strategies (using the 'Mitigation Hierarchy')⁴¹





INFO: By keeping an open mind, thinking 'outside the box' and working on mitigation solutions together with communities, project developers can do a lot to avoid, reduce and/or repair negative social impacts.

Apart from being used by the ESIA consultants and the project developers themselves, the above 'mitigation hierarchy' can also be used by communities and civil society organizations to develop locally grounded suggestions on how best to deal with certain impacts. It is important to emphasize here that by keeping an open mind, thinking 'outside the box' and working on mitigation solutions together with communities, project developers can do a lot to avoid, reduce and/or repair negative social impacts. However, if all this is not sufficient to address the negative impacts, then the project developers will have to compensate the affected people. After all, compensation for loss (or damage) of an asset, livelihood or access as a result of project operations is, if not a legal right in most countries, certainly part of international standards. For more information on compensation, particularly in the context of land access and resettlement, see Chapter 4.

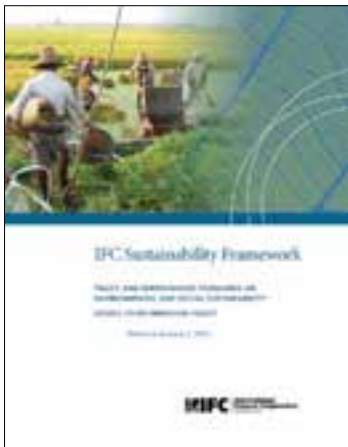
Finally, all the information is captured in an environmental (and/or social) impact assessment (EIA or ESIA) report, accompanied by an environmental (and/or social) impact management plan (EMP or SIMP).⁴² Depending on the regulatory framework, these reports should normally be publicly available, and communities and civil society organizations should be able to get a copy from the government (regulatory agency) or the company itself.

3.5 What Are Best Practices Regarding Impact Assessment and Impact Management?

There are several organizations that promote international standards on conducting impact assessments; the best known is the International Association for Impact Assessment (IAIA). IAIA's most recent guidance report and other key resources are listed at the end of this chapter. Most countries have legislation and expectations regarding impact assessments, and many have specialized regulatory agencies mandated to oversee such assessments and/or make sure they comply with relevant rules and regulations. Each community should check the national and local regulations. Large companies also have internal standards and guidelines for impact assessments. These may be accessible on the company's website or can be requested by the community from the company. At all times, companies must follow the law and relevant national regulations.

Experience shows that impact assessment and management should be applied:

- as a continuous *process* of identifying and managing the consequences of a certain project;
- as early as possible in decision-making and throughout the life cycle of the proposed activity. In particular, the social impact management plan (SIMP) should be reviewed on a regular (for example, annual) basis by the company and independently monitored and shared with communities;
- to all proposed development projects that may cause potentially significant effects;
- to bio-physical (including environmental) impacts as well as relevant socio-economic factors, including livelihood, health, culture, gender, lifestyle, age, and cumulative effects (resulting from previous or neighbouring projects) consistent with the concept and principles of sustainable development;
- to provide for the involvement and input of communities (with special consideration for women, youth, the elderly, and people with disabilities) and other local stakeholders affected by a proposed project, as well as the interested public;
- in a way that is appropriate to the local, cultural context and in a format and language that is understandable to affected local communities;
- in accordance with internationally agreed standards and good practice, in particular the IFC Performance Standards and those developed by IAIA.⁴³



Box 3.1 IFC Performance Standards

The IFC Environmental and Social Performance Standards define the responsibilities that companies funded by the IFC have for managing the environmental and social risks in their projects. The IFC Performance Standards are widely seen as the benchmark international best practice for identifying and managing risks and impacts in oil, gas, mining and other large-scale infrastructure projects.⁴⁴ In total, there are eight Performance Standards (PSs):

- PS 1: Assessment and Management of Environmental and Social Risks and Impacts
- PS 2: Labor and Working Conditions
- PS 3: Resource Efficiency and Pollution Prevention
- PS 4: Community Health, Safety and Security
- PS 5: Land Acquisition and Involuntary Resettlement
- PS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PS 7: Indigenous Peoples
- PS 8: Cultural Heritage



INFO: To enable communities to review and consult among themselves and relevant organizations, the impact assessment report should be summarized in a non-technical, local language and should be widely available several weeks in advance of any consultation meetings.

3.6 How Can a Community Review and Understand an Impact Assessment?

ESIA reports can be lengthy documents – comprising hundreds, sometimes 1,000+ pages – written in a highly technical language. Communities have the right to review impact assessment reports and address their concerns regarding the assessment. In several countries, open consultative forums are held to address community concerns regarding impact assessments. In reviewing impact assessments communities should:

- request that all forums are held in a language that they can understand;
- request copies of all impact assessments, mitigation management reports, and environmental audits with sufficient time to review them (at least 2 – 3 weeks);
- request that the company provide (non-technical) summaries of the key conclusions in a language and format that communities can understand;
- in the case of complex technical language being used, request funding and support from the company to hire an expert, so that communities can ensure they understand all components of the impact assessment; alternatively, request support from local civil society organizations in reviewing the impact assessments;
- bring all identified concerns to the consultation forums and discuss communities' questions with relevant government agencies and the company.



NGO representatives discussing the findings of ESIA report with community members.

As the process of identifying, analyzing and managing risks and impacts is inherently complex and the full ESIA reports – and even the non-technical summaries – are typically too difficult for a local community audience, it might be worth developing more practical, community-friendly tools. One interesting recent attempt is the so-called ‘social framework’ (see below), wherein people’s well-being rather than the project itself is put at the center of attention.

The Social Framework⁴⁵



The framework's eight categories correspond with all the main elements of a standard ESIA and Resettlement Action Plan (RAP; see Chapter 4). Its visual representation provides a snapshot of a large number of interrelated, potential social (and environmental) impacts and is likely to appeal more to communities than long tables or descriptions that are common in standard ESIA reports. Therefore, frameworks like these can be a useful tool to enable all stakeholders to participate in the design of mitigation measures and the planning and implementation of large-scale projects.

3.7 What Should A Community Look For In An Impact Assessment?

When reviewing an impact assessment report, communities should ask themselves:

1. What type of impact assessment is required by law, what type has been conducted in practice and what is included? For example, does it focus on environmental, social, health or human rights impacts, or a combination of any of these?
2. Was the community adequately consulted on/involved in the impact assessment, and were the legal requirements for community consultation met?
3. What are the community concerns regarding the proposed project?
4. Have these concerns been adequately addressed in the impact assessment? If not, in what way have these concerns not been addressed? In what way can community concerns still be addressed?
5. What are the identified negative impacts to the community in terms of:
 - a. environment;
 - b. social/cultural;



INFO: Communities should prepare a check-list (of key issues / questions to be addressed by the company) before the official ESIA consultation meeting.

- c. health;
 - d. economic/livelihoods;
 - e. security?
6. Do these identified impacts match the main community concerns, or are there any gaps?
 7. How do these impacts affect different vulnerable groups (including women, youth, the elderly, people with disabilities, etc.) within the community?
 8. What are the proposed mitigation measures for the assessed impacts?
 9. Do these mitigation measures adequately address the concerns of the community?
 10. Are there any positive impacts, and if so, how can they be further enhanced by the project?
 11. How will the impacts be monitored throughout the life of the project and how will new concerns be taken care of?

More Information

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4. WHAT WILL HAPPEN TO YOUR LAND AND HOMES?

For communities, land and water are among the most important resources. Not only do they provide a place to live and source of their livelihood, but for many communities land and water are also directly related to their culture and identity.

An oil, gas or mining project will always require access to land (and often to water), for example for the drilling sites, the mine, camps for housing workers and equipment, and access roads. The amount of land actually needed by the company on a longer term depends on the location, size and accessibility of the mineral deposit. By carefully planning project sites around existing villages, water points, forests and other socio-culturally important places as well as by using modern technologies – such as horizontal drilling from one single well pad, minimizing waste, and burying reinforced pipelines underground – companies can drastically reduce the amount of land needed. However, some impact on land is unavoidable.

Communities should therefore insist on governments requiring companies to use the above-described methods and comply with international standards in order to minimize the impact on land (and water). This chapter zooms in on the most important aspects related to land, in particular how both governments and companies are supposed to manage land access, resettlement and compensation according to the benchmark IFC Performance Standards. It offers guidance on what your community should do to find out what your rights are with regard to land access, resettlement and compensation.

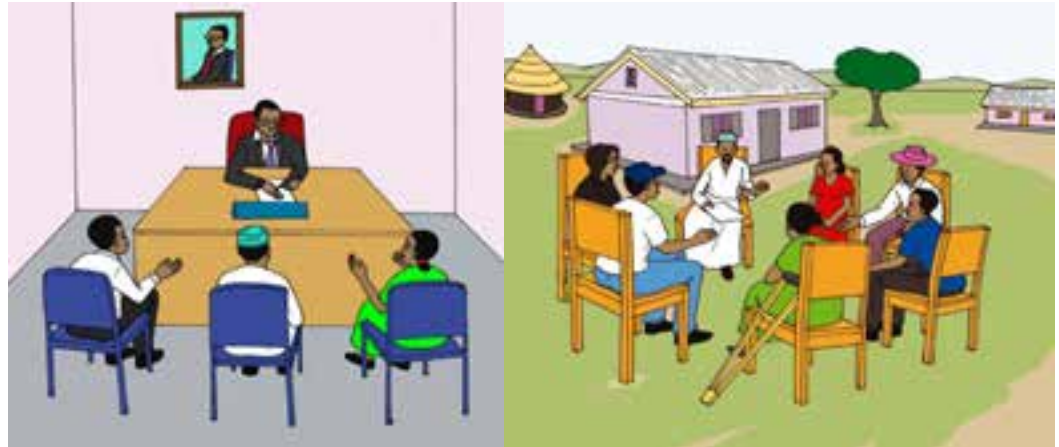
4.1 What Are Our Rights Around Land Access?

Community rights to land vary widely between countries and sometimes even between the different regions of a country, and it is therefore critical that you obtain relevant information about the laws and regulations in your area and, where necessary, seek expert legal advice. Depending on the particular land tenure system, generally speaking, the owner of the land can be the state (public land), an individual land owner (private land) or one or more communities (community land).

However, even though the land might belong to a private land owner or a community, the oil and minerals below the surface belong to the state, at least in most countries. The common problem with oil, gas and mining is that in order to extract the underground oil and minerals, companies need access to the land and have to get permission for this from whoever the land owner is. The exact land access procedure for oil, gas and mining differs from one country to another, but in each country there should be clear procedures that companies and governments have to comply with at different stages in their project (exploration, construction, production and closure), which communities and civil society organizations should monitor.

Depending on the type of land ownership, the purpose of acquiring land and the type of access needed (permanent or temporary), companies can decide to either buy the land or lease it for a specific period of time from the land owner. In the case of *land purchase*, the owner typically receives a one-off payment based on either a fixed, government-set rate or a market value rate. Once it is sold, the land belongs to the company indefinitely (unless it decides to sell it). In the case of *land lease*, the owner typically receives a regular payment

(for example, on an annual basis) for as long as the company leases the land. Once the lease expires, the land is given back to the original owner.



Private land owners and rural community members negotiating with company representatives over land access.



INFO: Before agreeing to any offer or deal with a company about land, communities should seek expert advice from a local lawyer and/or civil society organization specialized in land rights.

Again, there are significant variations between countries and, besides ownership rights, there are several other (customary) rights related to land that communities may be entitled to. Before you take any decision regarding your land, take the time to become familiar with the laws and regulations in your area and check the documents listed under ‘More information’ at the end of this chapter. Most importantly, before agreeing to any offer or deal with a company about land, it is highly advisable that you seek expert advice from a local lawyer or one of the organizations specialized in land rights mentioned at the end of this guide.

4.2 What Are Our Rights If We Need To Be Resettled?⁴⁶

Oil, gas and mining projects often lead to the displacement of people living in the (proposed) project area. *Physical displacement* occurs when you or members of your community are forced to leave your land or your homes. *Economic displacement* occurs when you or members of your community lose assets or access to assets (such as farm or grazing land, a river or stream, clean water), leading to a loss of income or livelihood. *Resettlement* is the physical act of moving your community from one location to another. It can happen voluntarily or involuntarily, and in extreme cases even by force. The latter is called ‘forced eviction’, which means people are removed from their land or homes against their will and without legal protection, which is a violation of international law.

International financial institutions, including the International Finance Corporation (IFC), the World Bank, the Asian Development Bank (ADB) and the African Development Bank (AfDB), that invest in oil, gas and mining and/or related infrastructure such as pipelines and roads have all developed standards and procedures that their clients – i.e. companies and/or governments – need to follow when their projects involve involuntary resettlement of people.⁴⁷

Resettlement should occur only as an option of last resort and in situations where it is unavoidable. It should also occur only when relevant standards (such as those of the IFC) are fully applied. Project developers should carefully plan and carry out any involuntary resettlement, and minimize harmful impacts on affected communities and host communities. Moreover, affected communities, and in particular vulnerable groups such as women, youth, the elderly and people with disabilities, should be involved early in the resettlement process and be allowed to fully participate in the planning and decision-making process. One of the key requirements is the development of a so-called *Resettlement Action*



Project affected people being transported to resettlement sites.



INFO: Project developers must at least restore and ideally improve livelihoods and the standard of living for all those who are resettled, including those who do not have formal or customary rights to land.

Plan (RAP), which outlines how the resettlement process will be organized, how the project developers will meet their obligations and how the affected people will be compensated.⁴⁸ Project developers must at least restore and ideally improve livelihoods and the standard of living for all those who are resettled, including those who do not have formal or customary rights to land. For example, newly provided resettlement sites for displaced persons must offer the same or better living conditions than the original sites, and resettled people's property rights must be registered ('security of tenure').⁴⁹

Since resettlement usually has severe social impacts on affected people and their livelihoods, international standards require that companies and government apply the more stringent standard of 'informed consultation and participation', or 'free, prior and informed consent (FPIC)' in the case of indigenous people. This means that project developers should inform affected communities sufficiently early about the resettlement process (including about eligibility and entitlement frameworks with compensation and livelihood restoration packages), let them participate in the drafting and validation of the resettlement action plan, and develop an effective grievance mechanism.⁵⁰

4.3 How Will We Be Compensated?

"Compensation is a way of making amends or reimbursing an affected person for what has been lost."⁵¹ Moreover, when we talk about compensation, it is important to remember it is "not a net benefit to those displaced: [it] is only a restitution of what was taken away (very often, an incomplete restitution)."⁵²

"[compensation] is not a net benefit to those displaced: [it] is only a restitution of what was taken away (very often, an incomplete restitution)."

In the case of oil, gas and mining, compensation is provided to offset a negative impact on project-affected people, for example to replace lost assets or access to resources, and to restore livelihoods. Therefore, in most countries, compensation is a legal right and should not be confused with (voluntary) benefits, such as employment or social investment projects sponsored by an investor.

Compensation may be in-kind (for example, assistance with skills development, developing a business, etc.) or in cash. When they first hear about compensation, many community representatives tend to prefer cash compensation and typically want to maximize the amount offered as soon as possible. Conversely, for project developers it is attractive to offer cash compensation for land, houses and crops in order to access the land quickly.⁵³ In specific circumstances cash compensation may be appropriate – for example, where livelihoods are not land-based (in urban areas) and there are active markets in land, housing and labor, and displaced persons use such markets and are used to managing larger sums of cash.⁵⁴

However, in the often remote, rural areas where most oil, gas and mining projects take place, these conditions do not apply and the experiences with cash compensation are overwhelmingly negative. Particularly when compensation is paid out in one, relatively large payment, there is a high risk that it will be spent quickly on consumables, alcohol or prostitution. Moreover, as the payments are generally paid to male household heads, this is generally to the detriment of women. Finally, injecting large sums of cash into small, local markets usually also leads to rampant inflation. With their land gone, compensation squandered and no sustainable investment made to replace their livelihood, affected families are often left deeply impoverished. To avoid this worst-case scenario and to develop a more systematic compensation framework, there are a number of steps that should be taken, at least by the project developers, but preferably also in close coordination with government and affected communities.⁵⁵

First of all, the project developers should conduct a detailed baseline study of the assets owned by affected communities, and the likely project impacts on livelihoods and cultural practices, as well as a benchmarking of government compensation rates, rates paid previously by the same project, and other project compensation rates. Using the baseline data and subsequent consultations, it should become clear who, and what assets, based on a specific ‘cut-off date’, are eligible for compensation and/or resettlement assistance.

Second, it is advisable to hire an independent surveyor, experienced with the local context, to establish the replacement value of each asset. IFC Performance Standard 5 requires that compensation rates for lost assets be calculated on the basis of *full replacement costs*.⁵⁶ Replacement costs are defined as the (fair) market value of the asset plus transaction costs (including preparation of land, registration fees and transfer taxes).⁵⁷ In some countries, governments have fixed compensation rates for land, crops, houses and other assets that are usually (far) below the replacement value. In those cases, it is important to “negotiate a process where the impacted households receive a top-up of government rates in a form acceptable to the government” and communities.⁵⁸



INFO: Where possible, compensation should be paid in kind, for example as replacement land (‘land for land’), housing and agricultural inputs, rather than in cash.

Where possible, compensation should be paid in kind, for example as replacement land (‘land for land’), housing and agricultural inputs, rather than in cash. Where replacement land of similar size and quality is not available, or where national legislation requires cash compensation, the larger payments should ideally be phased over a number of years and affected households should receive assistance via financial literacy training, help with opening bank accounts and other follow-up support to reduce the risk of unwise spending behavior (which often does remain high). Cash compensation for loss of common property and cultural resources is particularly difficult, and in this case project developers should either provide replacement land or access to other natural resources, or provide assistance such as improved management practices or other inputs that increase the productivity of the remaining natural resources.⁵⁹

Another important step is to develop an ‘entitlement matrix’ – or what some prefer to call an ‘impacts and packages matrix’ – which should outline the different categories of project-affected persons (PAPs), the different types of loss, and the different compensation, resettlement and other assistance packages they are entitled to.

Finally, it is important that the packages developed and agreed to are acceptable in particular to the affected households. This requires a careful and systematic negotiation process, which should be tailored to the specific circumstances and groups involved. International best practice indicates that negotiations over resettlement and compensation should take place both at community/group level and at individual household level. Experience shows that group-level discussions work best through a representative (resettlement) committee that brings together all relevant stakeholders, and they should be aimed at negotiating an agreed framework of objectives, guiding principles, standard compensation rates, livelihood programs and other assistance as well as implementation and monitoring and evaluation arrangements. At individual household level, there can then be discussion – albeit always within the framework agreed at group level – about the exact choice from a range of options (for resettlement compensation and assistance), for which each affected household will have to sign a receipt or other document.⁶⁰



INFO: Selected community members participating in negotiations over compensation should be truly representative, and consult regularly with the wider community on the compensation packages being agreed to.

To avoid tensions and conflicts within the community, it is important that the process is as transparent and as objective as possible, and clear to everyone, and that the selected community members participating in the group-level negotiations are truly representative, and consult regularly with the wider community on the packages being agreed to. Negotiations over compensation and resettlement are highly sensitive and prone to conflict; it is therefore important that communities are well prepared and where necessary seek independent advice.

More Information

- Guesnet, Lena and Marie Müller (2014) *Compensation Matters. Securing Community Interests in Large-Scale Investments* (Bread for the World and Bonn International Center for Conversion: Berlin). Available at: https://www.bicc.de/uploads/tx_bicctools/Compensation_Matters_e.pdf
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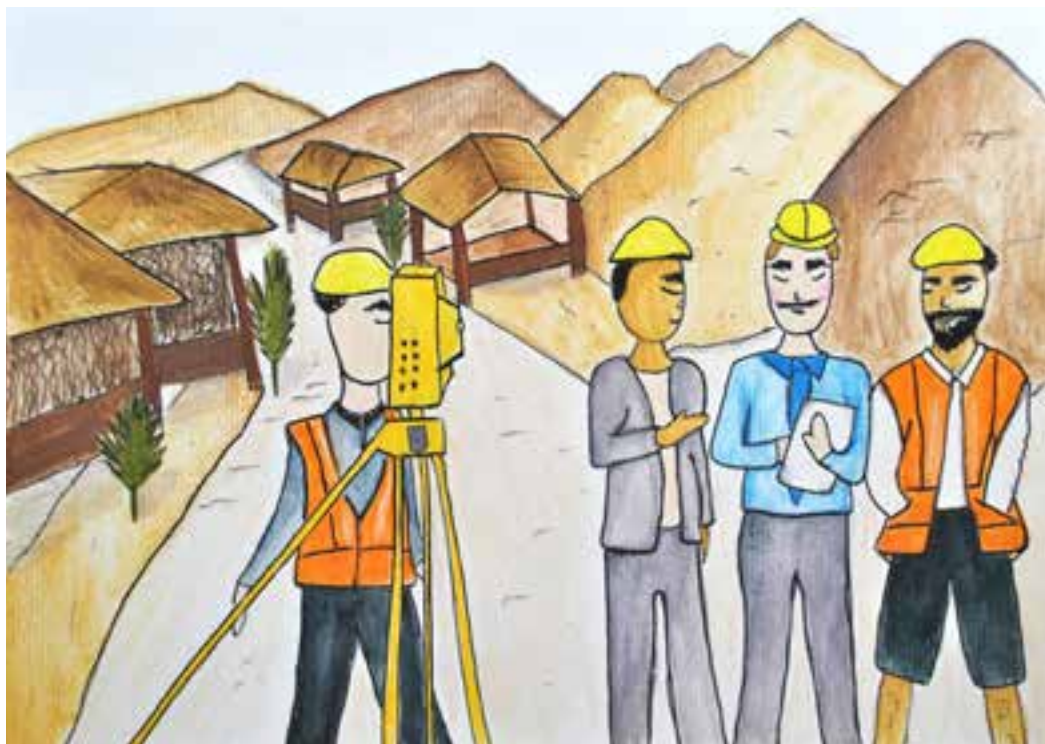
5. HOW CAN COMMUNITIES PREPARE THEMSELVES?

With a lot of attention from government, media and even civil society focusing on the engagement activities from the oil, gas and mining company and its subcontractors, it's easy to forget that communities traditionally have their own decision-making processes. These processes should be respected by other stakeholders and, where necessary, be strengthened.

This chapter draws heavily on the helpful Oxfam guide on free, prior and informed consent (FPIC), which outlines seven steps that communities can follow to prepare themselves for engagement with companies and take decisions regarding planned projects in their area on their own terms.⁶¹ The section below summarizes this material into five steps and provides additional ideas on how communities can structure and represent themselves, as well as on how to monitor project impacts themselves. The information in this chapter is directed particularly at community members wanting to ensure they are well prepared.

STEP 1

GATHER INFORMATION ABOUT THE PLANNED PROJECT



Find out who is developing the planned project. Illustration: Katie Webber/Oxfam Australia.

Once you know who is developing the project (which can be a combination of different companies, governments and investors), you ask them to provide you with information about the planned project. At this stage, if you do not already have information about the regulations for projects in your community and the rights accorded to you by the government, you should request this information from your government, regulatory agencies, or civil society organizations. See Box 5.1 for some useful questions to ask project developers.

Box 5.1: Key Questions To Ask (Information-Gathering)

- Who is developing the project? Who are their partners? Who is funding the project?
- What is the history and record of the project partners?
- What is the project? What will it do?
- How big is the planned project? When will it be built? How long will it operate?
- What land and communities will be affected? What will be the process for assessing environmental, social and human rights impacts?
- What will be built for the project? Such as roads, worker camp facilities, pipelines?
- What benefits will there be for local communities, and how sustainable are these?
- What support is the government providing for the project?
- What are the government regulations and required consultation relating to this project?
- How is the company planning to consult with the community?



Request information from the project developers. Illustration: Katie Webber/Oxfam Australia.

STEP 2

DISCUSS THE PROJECT WITHIN YOUR COMMUNITY

Inclusive Community Discussions

Once the community has information on the project, the community should hold discussions among itself to discuss and decide the following:

- From our community perspective, what does a successful project look like, and what should its legacy be?
- What are our needs, priorities and concerns with regard to the project, in the short, medium and long term?
- How do we want to organize and represent ourselves during the consultation process?

All members of the community should be included in these internal discussions, including women and youth, as all members of the community are affected differently by a project.



Hold discussions within your community. Illustration: Katie Webber/Oxfam Australia.

At this stage, it is very important for members to work together and form a united front so that the community can speak as one with the company. This is not to say that everyone within the community should have the same view or that they should always agree with one another. However,

if the community as a whole is divided and its members cannot organize themselves, then the consultation process between the company and community will be very difficult and risks being manipulated by self-interested groups or individuals within or outside the community ('elite capture').

There are several different ways that communities can prepare themselves for the consultation process. There is no single, standard process that works better than others. What is important is that they organize themselves, create mechanisms for communication within the community, and work together to ensure that all views are heard and represented in the consultation process. Tools that can be used to inform and organize the community are community meetings, posters, flyers, brochures, organigrams and maps (see Box 5.3).

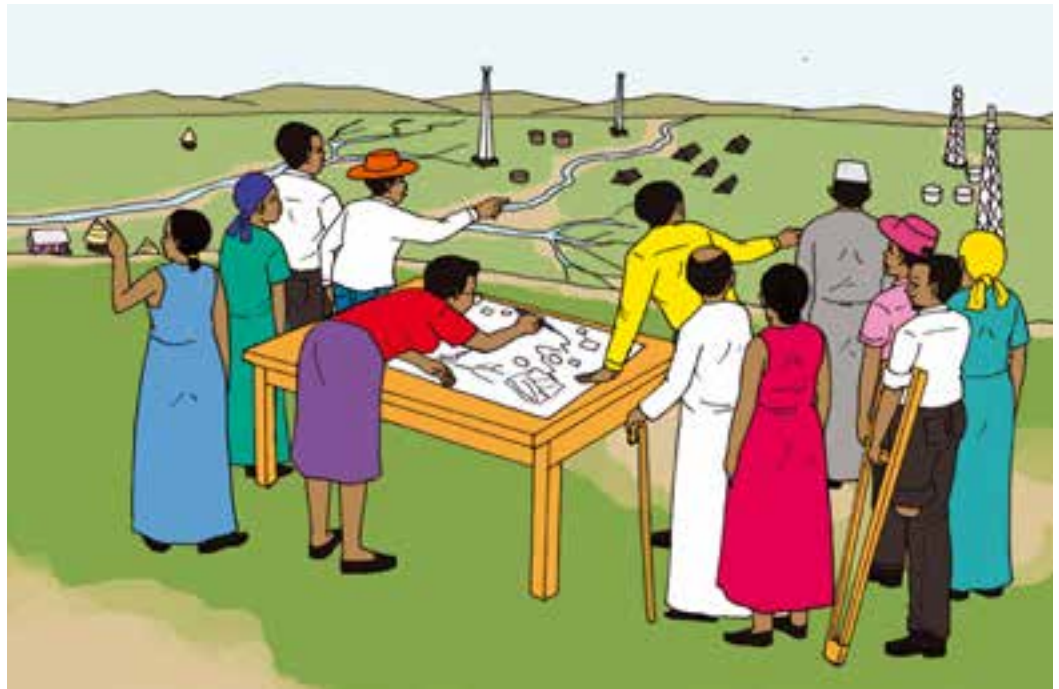
Box 5.3 Community Discussion Tools

Community Communication Structure

Develop a diagram or picture of how the community plans to organize itself, what mechanisms will be used for communication within the community as well as with the company, government and other stakeholders, who will lead and/or facilitate these interactions, and what solutions will be created to work together to ensure that all views (including those of vulnerable groups) are met and represented in the consultation process.

Community - Project Footprint Mapping

Once you have collected as much information about the project as possible, organize a larger community meeting to 1) map out the wider community area; 2) map the size of the project and its related infrastructure as well as how it overlaps with the community area (based on the information you currently have). Such maps will be helpful in explaining to the developers the concerns the community has about project impacts.



Community members developing a map of their area.

Community Organization

The preferred level of community organization for consultation will depend on the scale of development occurring in the community. For example, a community with one exploration project on its land requires a different level of organization than a community with various operational projects and related activities occurring on its land. Potential approaches to community organization include the following:

- *Elect a leader to represent the community in talks with the company* – in this approach the community elects one or more leaders to represent the community's views and lead the consultation process.
- *Create a working group to meet with the company* – here a group of community members who represent different interests (including those of vulnerable groups like women, children and the elderly) within the community work together to represent the community in the consultation process.
- *Community meetings/'open house'* – in this approach the community invites the company to come and speak to all members of the community regarding the proposed project.

These approaches can be used in any combination, and can all be used together. For instance, one person can be elected to manage the daily communications, and this person might represent a larger working group. Community open houses can be held on a periodic basis so that all community members can put their questions to the company. In addition to these mechanisms, communities can also create more formal structures for the consultation process, with significant variation depending on context:

- *Consultation committee*: this is a full- or part-time body within the community wherein one or more community representatives – either on a volunteer basis or paid by civil society organizations or sometimes even the company – are responsible for managing consultation with the company;
- *Intermediary organization* such as a community-based industry relations committee/council. This is a registered body that represents the community in consultation with the community. Depending on the laws in your country, structuring it as either an NGO, company or foundation permits this body to be funded and paid by other actors, including even the company, for services provided in the consultative effort, but with its full ownership being retained by the community.



IMPORTANT: To avoid 'elite capture' all community consultation structures and processes should be managed in a transparent and open manner. Those members chosen as the main spokespersons or representatives should consult and report back regularly with the wider community.

Community Representation

To avoid the capturing of benefit by local elites ('elite capture') it is important that all these processes and structures are managed in a transparent and open manner and that those community members chosen as the main spokespersons or representatives consult and report back regularly with the wider community. When selecting leaders to represent your community in the consultation process you need to take into consideration several aspects, such as:

- Does the person understand the project and the consultation process?
- Does the person understand the national requirements/guidelines and international guidelines for consultation? If not, are they willing to learn and figure this out?
- Do they have experience in representing the community and conducting negotiations on the community's behalf?
- Are they trusted and well respected within the community?
- Do they openly share information in the community?
- Do they place the interests of the community first?

When voting for a leader/representative it is very important that the election process is conducted in as transparent and open a manner as possible. The nature of the election process will determine a leader's/representative's legitimacy, and therefore the degree of support that that leader/representative will have within the community when communicating and/or taking decisions with the other stakeholders.

Community Protocols⁶²

With increasing engagement between communities and external actors, including oil, gas and mining companies, it is useful to articulate the customary rules and procedures that communities have for organizing themselves and interacting with outsiders in forms that can be understood by others. This is what some call establishing 'community protocols', which means "both a process and an outcome that documents a community's territory, customary laws, institutions and decision-making systems, traditional knowledge and natural resource stewardship, governance and/or management systems, visions and plans for the future, issues with and priorities for development, terms and conditions for engaging with external actors, and other characteristics that comprise the community's identity and life plans".⁶³

Despite the significant time needed, recent experience in different countries indicates that community protocols can help communities to be better organized and to articulate their views, while helping developers and government to better understand communities and how they are structured. In addition, such protocols can also help to equalize the often distorted balance in company-community relationships, so that communities are again truly recognized as 'hosts' that have certain responsibilities while companies, apart from being investors, are first and foremost 'guests' that have to follow the (cultural) rules of the area.

STEP 3

COMMUNITY CONSULTATIONS WITH THE PROJECT DEVELOPERS



Community consultations with the project developers. Illustration: Katie Webber/Oxfam Australia.

Once the community has organized itself, mapped out its area and the likely project footprint, it is ready to begin the consultation process. By speaking with the company, the community is NOT giving consent to the project, it is only learning about the project. At this time, it is a good idea to communicate to the company the needs, priorities and concerns regarding the project.

Box 5.2: Key Questions to Ask (Consultation)

- How big will the project be?
- What areas of land and which communities will be affected? Are there maps to show this?
- What kind of impact assessments will the company conduct (environmental, social, health, and/or human rights?) Who will conduct the impact assessments? When will they be conducted? Will they be made available in a summarized format and local language?
- What are the potential risks of the project?
- What benefits will there be for local communities, and how sustainable are these?
- Does the company have a 'local content' policy?⁶⁴
- What is the company's planned consultation process? How will the community be consulted at each stage of the process?
- What will be the consultation process if there is a change in project scope or design?
- What communities are being consulted regarding the project?
- What benefits does the company see for the community?
- Is the company planning to have a community development agreement?
- How will profits from the project be distributed?

It is important to note that this stage may last over several meetings. At the early stages of a new project, companies may not have all of the answers to these questions. Companies also need time to organize on their side so that they can make decisions regarding engagement with the community. Companies should consult with your community not only in the early stages of the project, but also before each new stage of the project. For communities it is important to keep their own record of all meetings, resolutions, decisions and agreements, both within the community and with the company.

STEP 4

NEGOTIATE AND MAKE DECISIONS AS A COMMUNITY



Make decisions as a community. Illustration: Katie Webber/Oxfam Australia.

Work Jointly and Inclusively

At this point the consultation process is ongoing. Exchange of information and viewpoints can go back and forth, across multiple encounters. Community members need to ensure that they are discussing among themselves and making decisions as a community. As stated in Step 2, communities need to decide for themselves on how they will make their decisions. Some communities may choose to have regular meetings and make decisions as a large group; others may choose to elect a working group to make the decisions. What is important is not the specific approach taken, but that a community works together and ensures that all its members have their voices represented.

Seek Expert Advice

Communities may also choose to seek advice and assistance from outside organizations such as NGOs, other communities, or legal and technical experts (see the section on 'Useful Resources' at the end of this guide). If this is your first time working with a company, it may be a good idea to learn from communities in other parts of your country that have experience of working with companies. If you are unsure about your rights and whether they are being respected, then you may want to consult a lawyer. Or, if you have now received the impact assessment reports or a draft agreement and are not clear on their contents, you should consult a relevant specialist to explain them. Similarly, it might be useful to look for an independent mediator between the community and the company.



IMPORTANT: A community needs to understand the issues (including benefits and risks) being discussed and negotiated, before saying 'yes' or 'no' to a project.

Informed Decision-Making

It is important to remember that once your community is ready to decide, your decisions should be *informed* decisions, meaning that you understand the issues (including benefits and risks) being discussed and negotiated. "If you decide to say 'yes' to a project, you should make sure that the agreement you make with the project developers is recorded in writing, including in your community's language(s)."⁶⁵ In this case you may want to enter into an impact benefit/community development agreement, which is a legally binding agreement between a company and a community (sometimes also involving government) outlining the likely negative impacts, how they will be mitigated and what kind of benefits (including jobs and social investment) the company will provide (see also Chapter 6). However, "if your community believes that the project will not be positive for the community, you can say 'no' – or in other words not give your consent – to the project. The project should only proceed if the consent of Indigenous Peoples is obtained by both the government and project developer. For non-indigenous project-affected communities, when they say 'no' to a project, this should be accounted for", at the very least by documenting the objection and registering it as a grievance.⁶⁶

STEP 5

ONGOING CONSULTATION AND PARTICIPATORY MONITORING⁶⁷



Ongoing communication with the project developers. Illustration: Katie Webber/Oxfam Australia.

No matter whether you said no or yes to a project, it is important to have a good working relationship between your own community, the company, and ideally also the government. You should be regularly updated about the project's progress or any changes to it. At this stage, it is recommended to create a process with the company for ongoing consultation. For example, you might agree to have monthly progress meetings to update on any changes to the project or changes within the community.

In order to have informed discussions with project developers and other stakeholders, your community needs to collect information about how you are being affected by the project on a frequent basis and in a systematic manner. This helps you understand what is going on and provides a basis for more evidence-based dialogue. There are a number of tools that your community can use to monitor what's happening in your area and to influence and help design better company and/or government plans (see Box 5.1). Asking independent and credible (civil society) organizations to assist with monitoring can help increase the (perceived) legitimacy of community concerns.



Community volunteers monitoring project impact.

Box 5.1 Tools for Participatory Monitoring

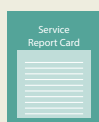
Participatory planning: At the very least members of local communities can contribute ideas to plans for company (and also government!) activities relating to business and to local development. It is more participatory and more sustainable in the long term, however, to use a local community-driven development (CDD) approach. In this case it is local communities themselves who identify their needs and priorities, develop community development plans and manage the financial and human resources required to implement those plans.



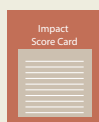
Community suggestion boxes: Boxes placed in an easily accessible public location. Members of a community may submit anonymous complaints, suggestions or questions. The box is opened publicly at pre-determined times (e.g. weekly) and a response provided to each suggestion.



Participatory budgeting: A process by which community representatives decide on or contribute to decisions regarding the allocation and monitoring of expenditures of all or a portion of a company's social investment resources.



Citizen report cards: Report cards based on a survey designed to rate the effectiveness of a project or service. The content of the survey is guided by key criteria identified by the intended beneficiaries and other community members.



Community scorecards: Participatory processes by which community groups can monitor and/or evaluate a service offered for their benefit or a particular type of impact associated with the project. Beneficiary groups and service providers identify key indicators of success or progress, and rate effectiveness on a simple scale.

More Information

- American Bar Association (2015) *Mining and Communities: Supporting Human Rights-Based Development in the Context of Industrial Mining in Guinea. A Practical Guide for Civil Society Organizations and Local Authorities* (ABA/ROLI: Washington DC). Available in full-length and abridged versions in French and English at: http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/guinea/news/news-guinea-aba-rolipublishes-guide-for-mining-communities-o815.html
- Earthworks (2005) *Oil and Gas At Your Door? A landowner's guide to oil and gas development* (Earthworks: Colorado). Available at: <https://www.earthworkSACTION.org/files/publications/Loguide2005book.pdf>
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6. HOW CAN COMMUNITIES PLAN FOR FUTURE GENERATIONS?

Oil, gas and mining in particular are long-term projects and can span multiple generations. It is therefore important to responsibly manage not only impacts but also benefits and revenues for current and future generations. One of the best ways to do this at the community level is to negotiate a community development agreement (CDA).

6.1 What Are Community Development Agreements?⁶⁸

A Community Development Agreement (CDA) is a consultation-based agreement between the company and the local communities affected by project activities that will address both how the community can take advantage of development gains offered by the project and how impacts from the project might be mitigated. A CDA has become the generic term for different types of agreement that may have the similar goals of promoting community involvement and development benefits, but in specific content and detail can vary considerably (see Box 6.1).

Box 6.1 Different Types of CDA⁶⁹

- Voluntary Agreements
- Community Development Initiatives
- Partnership Agreements
- Participation Agreements
- Impact Benefit Agreements
- Community Contracts
- Landowner Agreements
- Shared Responsibility Agreements
- Investment Agreements
- Exploration Agreements
- Benefits Sharing Agreements
- Social Trust Funds
- Empowerment Agreements
- Community Joint Ventures

In some countries the government requires that companies have a CDA with the local community. In other countries, it is considered best practice to have a CDA, but it is not a requirement. It is important to check with your national authorities as to what the guidelines and standards for CDAs are in your country. Depending on the legal requirements, it is not unusual, and is actually advisable, for national or local government to play a role in the facilitation of a CDA. This can help to increase transparency, address any power imbalances, and to ensure that responsibility for providing basic services lies with government, as it should. Such agreements should address environmental, social, health, and human rights concerns within the community.



Community Development Agreement	
About the Project	i
About the Community	iii
Impacts and Mitigation Measures	1
Benefits	4
Governance Structure	9
Consultation Commitments	12
Grievance Mechanism	20

Key components of a CDA.

The goal of a CDA is to create a transparent agreement that sets out concrete financial and non-financial benefits (for example employment and business opportunities) for the local community (and local service providers), clarifies communications processes, and establishes responsibilities for reporting and monitoring.

Potential benefits of CDAs for communities include:

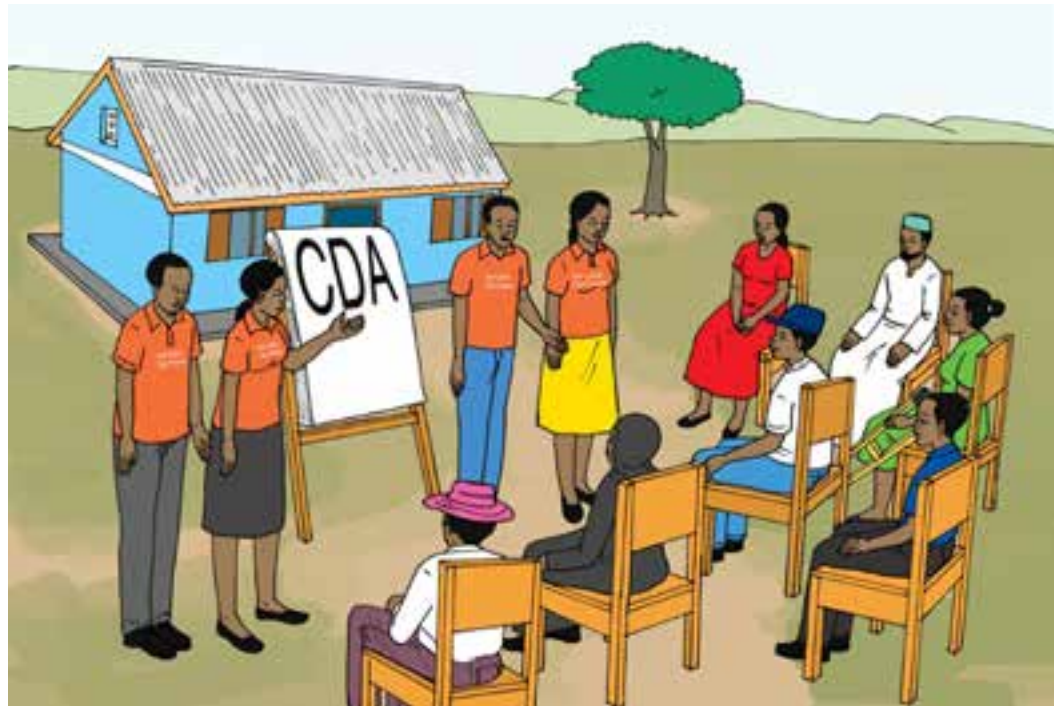
- recognition of status as landowners;
- acknowledgements of impacts;
- compensation for impacts;
- development benefits;
- greater clarity regarding what the developer is committing to;
- a legal framework for ongoing engagement.

Potential risks of CDAs for communities include:

- limits capacity to change engagement plans;
- groups that are not part of the 'CDA' are not consulted. This might lead to alienation and tensions between communities.

6.2 What Is The Role Of The Community in CDAs?

Communities are supposed to take a central role in the CDA process. However, referring back to the previous chapter, communities first need to decide how they want to be represented within the CDA negotiation process with the company. That is, does the community elect one person to do the negotiations? Does a working group or council represent the community? Or does the community prefer to have open meetings and vote on issues as they arise? As mentioned in Chapter 5, documenting the community's decision-making processes and vision of the future in some form of community protocol can be helpful before entering into formal negotiations with a company. Once a representation process has been agreed, the community must decide on what it wants included in the CDA, how it wants specific aspects to be reported on, and monitoring of the CDA once agreement is reached.



NGO representatives informing community members about CDAs.



INFO: CDAs are more successful when there is a level playing field and companies help communities to strengthen their capacities and skills in the areas of governance, negotiations and program delivery.

Experience shows that for the CDA to be successful and for the community to be able to play its role, it is important that the company, ideally together with other (civil society) organizations present in the area, helps strengthen community capacities in various fields via different types of capacity-building:

- **Agreement-making capacity:** financial and logistic assistance, independent expert advice, negotiation training, project and industry awareness-raising, appointment of independent mediators, work with local NGOs to help improve community governance.
- **Governance capacity:** liaison and management committees; financial management structures such as trusts and foundations; dispute resolution processes; internal and external communication processes; and monitoring and review processes.
- **Program-delivery capacity:** grant management, leadership development, networking, organizational development, etc.⁷⁰

Finally, there should be sufficient support to help communities with the ongoing monitoring and implementation of the CDA as well as their participation in any relevant structures.⁷¹

6.3 What are Community Development Foundations, Trusts and Funds?⁷²

Community Development Foundations (CDFs), Trusts and Funds are another mechanism used by companies to share the benefits from mineral production with communities. Foundations, trusts and funds vary in the way that they work from country to country, but for the most part have similar goals and objectives.

The three main purposes for which the extractive sector (most commonly the mining sector) uses foundations, trusts and funds (FTFs) are:

- **Community investment:** voluntary actions or contributions by companies beyond the scope of their normal business operations.
- **Compensation:** payments made by companies to mitigate the impacts generated by projects.
- **Payments to Government:** taxes and royalties as well as other payment schemes, which exist between oil/mining companies and various levels of government and are intended for redistribution to communities through some form of benefit-sharing mechanism.⁷³

FTFs can be established at the international, national, regional or local level. They can be established with national governments or with regional and local communities. Here, we focus on FTFs at the local community level.

FTFs can take on different forms, such as grant-making or operational roles, and can have different structures for how they are organized and run. For example, there can be both company foundations and community foundations. A company foundation is a legal entity set up by the company that is separate from the business and its role is to deliver social development projects. There are various levels of company involvement within these foundations. A community foundation, on the other hand, is set up by the community – often with external assistance – and works as an independent, not-for-profit organization for community development. The foundation establishes a process for determining how the money is spent within the community, usually managed by a professional secretariat and supervised by a local board. The community foundation can be funded by a broad range of donors, including local philanthropists and local businesses, but also international organizations and private sector companies.

An example of how a community foundation operates is that a community legally incorporates a foundation. Either one or several companies agree to the funding structure, for instance 1% of their pre-tax annual profits. The community then establishes a board of directors consisting of community members, which either manages and/or distributes grants for activities within the community, or makes decisions on community development projects to be invested in the community.

There are clearly similarities between CDAs and FTFs, but there are also important differences. One key difference is that CDAs are between one company and one community, whereas a FTF can be funded by multiple donors, including companies, for one community. It is possible for communities to have both a CDA and a foundation. For example, a part of the CDA could be that the company contributes a certain amount annually to the community development foundation.

6.5 How Can a Community Monitor CDAs?⁷⁴

Community-based monitoring is a process whereby a range of stakeholders such as citizens, government agencies, industry, academic institutions, community groups and local institutions work together to monitor, track and respond to issues of common community concern.

Community-based monitoring can take several different forms. These can include:

- community involvement in the development of indicators for monitoring impacts;
- community feedback sessions with the company;
- joint on-site monitoring and assessment of environmental and social impacts.

The role of communities in the consultation and agreement-making process includes, but is not limited to: defining local needs and priorities;

- communicating local knowledge and values;
- establishing community planning and mobilization;
- determining mobilization of local assets and resources;
- engaging in monitoring and evaluation;
- resolving internal organizational issues and conflict.



INFO: Communities can play an important role in monitoring environmental and social impacts of oil, gas and mining projects.

More information

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7. HOW CAN COMMUNITIES CONTRIBUTE TO CONFLICT TRANSFORMATION?

7.1 What Are Common Conflict Issues In Oil And Mining Areas?

Conflict can arise for several different reasons and can occur between the government and company, between the community and company, within the community or between communities. This section mainly focuses on conflict between the community and the company. However, it is important to emphasize that the government is a central actor in all company–community conflicts, whether by its actions, inactions and presence, or by its complete absence.

One of the best-known studies in this field distinguishes more than 20 different (potential and actual) **conflict issues** related to four broad types of *change* associated with oil, gas or mining activities:⁷⁵

1. *Social and cultural change*, related to: a) **population and demographics** (influx of migrant workers, social inclusion, growth/decline of communities or towns, workers' camps); b) **social services** (housing, skills shortages/retention, health, education and training); c) **crime and social order** (corruption, domestic and sexual violence, substance abuse and trafficking, prostitution, change in social norms); d) **community health and safety** (disease, vehicle accidents, spills, controlled release, pollution, disruption of food supply); e) **labour issues** (health and safety, remuneration, freedom of association, discrimination); f) **security issues** (behaviour of security personnel (government, company, contractors), targeting/repression of activists, suppression of demonstrations); g) **culture and customs** (breakdown of traditional roles, changing production/employment base, community cohesion, effects of cash economy, 'sense of place', community leadership, cultural heritage); h) **vulnerable and marginalized groups** (disproportionate or particular effects on women, children, people with disabilities, the elderly, ethnic minorities, indigenous peoples, artisanal and small-scale miners, etc.).
2. *Economic change*, related to: a) **distribution of benefits** (employment, profit flows, royalties and taxes, training, procurement, supply chain, community development, compensation, managing expectations, equitable distribution (across state/regional/local/ethnic/class/family or other lines), effects of cash economy, technology transfer, corruption); b) **inflation/deflation** (housing [ownership/rents], food, access to social services); c) **infrastructure** (demands on/investment in roads, rail, ports, etc.).
3. *Socio-environmental change*, related to: a) **pollution** (source of or sink for) (air [dust], water [acid and metalliferous drainage, cyanide, tailings seepage, riverine and submarine disposal], soil, noise, scenic amenity, vibration, radiation, traffic, etc.); b) **resources** (access to/competition over) (land, water [groundwater, river, ocean], mineral resources, cultural heritage, forest resources, human, biodiversity); c) **resettlement** (consent and consultation in relation to resettlement, compensation, ties/relationship to land, equity, adequacy of resettlement housing and facilities, livelihoods); d) **disturbance** (disruption [including during exploration], consent and consultation in relation to land access, frequency and timing, compensation).



INFO: Companies should be conflict-sensitive in every part of their operations, taking all necessary steps to assess the potential impact of their operations on conflict, safeguard human rights and contribute to peace-building.

4. *The process of change itself*, related to: a) **consultation and communication** (transparency, timing, inclusiveness, clear reporting, access to decision-makers, respect for customs and traditional authority structures); b) **consent** (sovereign consent [indigenous/FPIC or governmental], community consent (non-sovereign)); c) **participation** (development of programmes, monitoring, selection of alternatives and technologies, planning operational aspects); d) **redress** (dispute resolution, company-level grievance mechanisms, accessibility, transparency, dialogue and engagement, third-party mechanisms); e) **agreements** (equity, clarity of obligations, duress, capacity and governance, honouring commitments/performance, new corporate entity/transfer of obligations, cross-border projects, corruption); f) **community development** (participation, adequacy, appropriateness, capacity to deliver, prioritization, corruption).

In what some policy-makers and civil society activists call ‘fragile states’ and other countries where large-scale, violent conflict is a regular phenomenon, business activities by private sector companies, unless well managed, can easily exacerbate existing tensions within and between different communities over the use of scarce natural resources. In extreme cases, business can even fuel conflicts between armed groups over the control of territory or lucrative mineral resources. In these high-risk contexts, companies should therefore be particularly conflict-sensitive in every part of their operations, and take all necessary steps to assess the potential impact of their operations on conflict (for example, via conflict impact assessments), safeguard human rights and contribute to peace-building.⁷⁶ For a useful overview of relevant standards that companies should use in conflict contexts, see the publications listed under ‘More information’ at the end of this chapter.



‘The risk of non-inclusive investment’, copied with permission from South Sudan Law Society (2012) Handbook on Community Engagement (SSLS: Juba), p.5.

7.2 What Are the Risks, Impacts And Consequences of Violent Conflict?

Dispute and disagreement are common between communities and companies, and as long as they are amicably resolved there is nothing wrong with them. Sometimes, when communities feel their views are not heard, protests can occur and in these situations it is important that both sides listen even more carefully to each other: “Protest is, in effect, a form of community feedback which occurs when normal engagement and grievance mechanism are not working effectively. Rather than the defensive strategy typically adopted, companies should realize the protest signals that they should enhance their community engagement approach and establish genuine dialogue procedures before protest escalates and conflict occurs.”⁷⁷



Potentially negative impacts of conflictual relations between communities and oil, gas or mining companies.

However, when tensions and conflict boil over into *violence*, there is clearly a no-win situation for both parties. The risks to communities of violent conflict involve:

- destruction of community property;
- loss of community members' jobs and business opportunities as a result of company operation shutdowns;
- displacement;
- potential injury and/or death of community members.

The impacts of conflict turning violent can thus be severe and long-lasting, particularly for the community. Over time, potential consequences of conflict include:

- increased corruption and other forms of profiteering from selfish leaders, illegal traders and armed gangs who benefit from instability;
- destruction of social relations and social cohesion in the community;
- intervention by the national government (which can be positive or negative);
- increased 'securitization' of the project, e.g. via more fencing of company installations with armed guards, company staff moving around with armed escorts, highly restricted access to company offices and staff for local communities;
- loss of employment and business opportunities if the company decides to pull out;
- decommissioning and withdrawal of the project.

Depending on the situation, some communities and people with specific interests may welcome it when a company decides to stop its operations and/or pull out completely. However, it is clear that conflict, and especially violent conflict, should be avoided at all costs.

7.3 What Dispute Resolution Mechanisms Are Available?

There is a wide variety of mechanisms to address grievances and resolve disputes, operating at the local, national or international level, being either state- or non-state based, and either using the judicial process (e.g. litigation, i.e. going through the courts) or being non-judicial in nature. As judicial mechanisms are usually too expensive, or not accessible in remote areas, are sometimes considered corrupt, and/or they result in less desirable win-lose outcomes, non-judicial or *alternative dispute resolution* (ADR) is often more appropriate when it comes to dealing with community-company conflict.

Depending on the context, the issue at stake and preference of the parties involved, there are different ADR mechanisms that can help. *Negotiation* is usually tried first to resolve a dispute, and its main advantage is that it allows the parties themselves to control the process and the solution. In *mediation* an independent third party helps to bring both parties together to reach a settlement that both parties either accept or reject. In *arbitration*, the conflicting parties typically choose a panel of arbitrators who will hear and review the evidence and come to a decision that is final and usually legally binding. Negotiation and mediation are particularly suited for resolving disputes between communities and companies, as these mechanisms are very accessible and relatively easy to organize, unlike arbitration which is more formal and more suited for resolving commercial disputes between companies and/or company and government.

More traditional, customary conflict resolution approaches such as *reconciliation* of different interpretations of what went wrong are useful for restoring social harmony in the community in general and social relationships between conflicting parties in particular. This approach is particularly suitable for resolving disputes *within* or *between* communities, as it helps to heal divisions between community representatives. However, once communities are more united this, in turn, can also help prevent conflict with companies.

Other so-called *operational-level grievance mechanisms*, organized either by government or by companies themselves, are increasingly seen as another important way to resolve complaints and/or disputes between communities and companies.



INFO: The UN Guiding Principles on Business and Human Rights has developed a number of effectiveness criteria for a grievance mechanism.

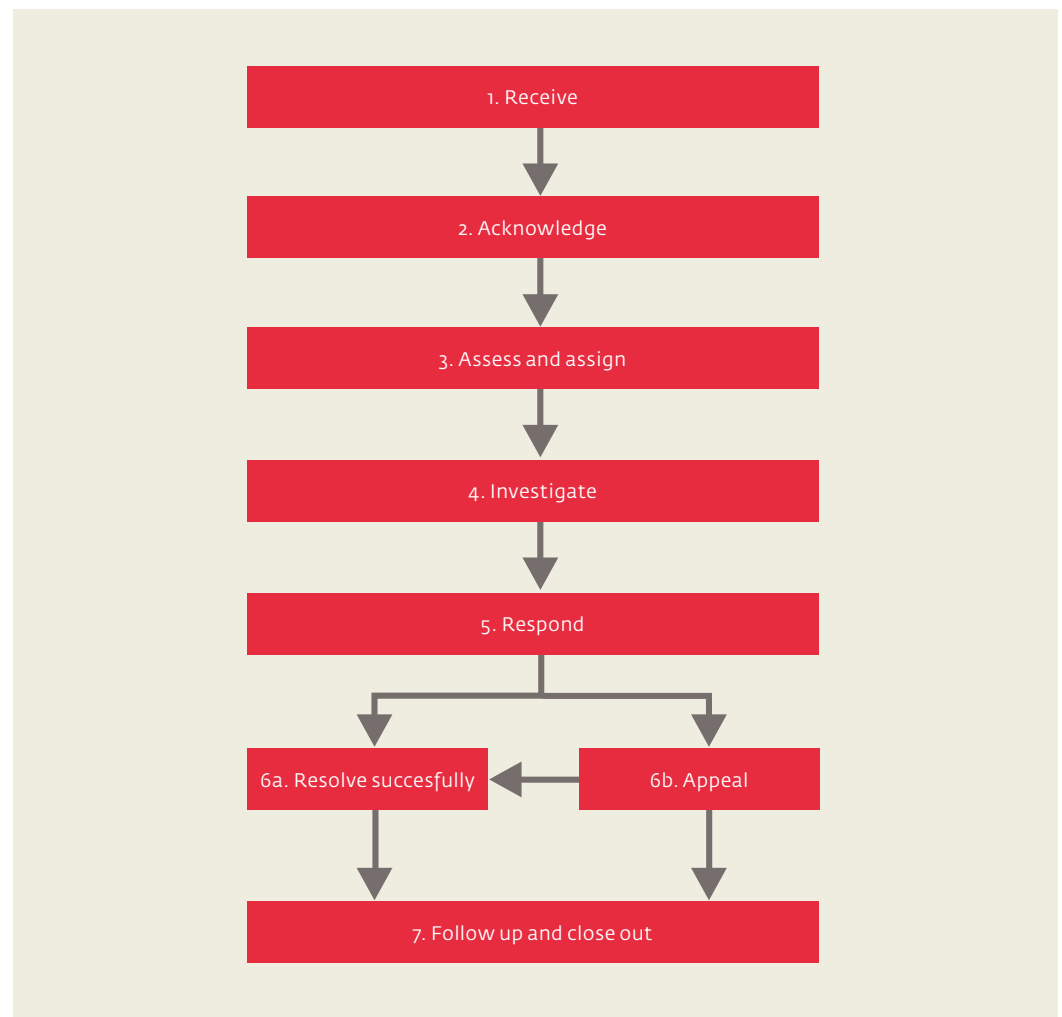
According to the UN Guiding Principles on Business and Human Rights (mentioned in Chapter 2), for grievance mechanisms to be effective they need to meet a number of criteria:

- a. *Legitimate*: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b. *Accessible*: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c. *Predictable*: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d. *Equitable*: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e. *Transparent*: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- f. *Rights-compatible*: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g. A source of *continuous learning*: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- h. Based on *engagement and dialogue*: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.⁷⁸



INFO: A grievance mechanism is one of the main tools used by companies to register community complaints. Communities should know how it works and can be accessed.

According to best practice, companies should have an operational-level grievance mechanism in place for addressing community concerns. The main international oil industry association (IPIECA) and mining industry association (ICMM) have both developed training tools for companies on how to develop and implement a process specifically for local community grievances.⁷⁹ Even if you are skeptical or don't trust the company, your community should at least be aware of the grievance mechanism process, ask companies exactly how it works and how it can be accessed. Ideally, communities should be involved in the design of the mechanism so that it meets their needs and is appropriate for the specific socio-cultural context. Although there might be other ways of sharing your concerns with the company, the grievance mechanism is often the main tool used by companies to officially register community complaints; and once a complaint is registered it can no longer be easily ignored. Below is a simplified diagram of how a basic (company-led) community-level grievance mechanism is expected to work.

Steps in the Community Grievance Procedure⁸⁰

1. *Receive*: The process begins when a complaint is received by the company. The complaint is then internally forwarded to the right department and the person working with that community, who is generally called the Community Liaison Officer (CLO). The complaint should be registered in a complaints register.
2. *Acknowledge*: A letter is sent to the complainant acknowledging that the complaint has been received and has been registered.
3. *Assess and assign*: The company makes an initial assessment regarding the severity of the complaint and assigns an employee, known as the 'complaint owner', to address the complaint.
4. *Investigate*: The complaint owner investigates the complaint and proposes options to resolve the issues. Third parties may become involved as required to assess the facts.
5. *Respond*: The complaint owner and Community Liaison Officer communicate the findings of the investigation to the complainant and propose a resolution. If the complainant accepts the resolution, the company will proceed to implementation. If the complainant does not accept the resolution, the complaint will be put before an appeals committee.
6. *a. Resolve successfully*: If the complainant agrees with the resolution the solution is implemented and the company informs the complainant once the solution has been implemented. The complainant will often be asked to sign a form stating that the dispute has been resolved. The complaint is then registered as resolved.
b. Appeal: If agreement on a resolution is not reached, the complainant can appeal. An appeals committee should review the case and recommend a course of action.

7. Follow-up and closure: The case has been resolved and no further action is required.

Closure status can be classified as:

- Resolved: complaints where a resolution has been agreed and implemented and the complainant has signed the Confirmation Form.
- Unresolved: complaints where it has not been possible to reach an agreed resolution and the case has been authorized for closure by the Appeals Committee.
- Abandoned: complaints where the complainant is not contactable after one month following receipt of a complaint and efforts to trace his or her whereabouts have been unsuccessful.⁸¹

If there is a company-level grievance mechanism in your area, then it makes sense to use it as the starting point for lodging your concern or complaint as long as it relates to the project. Remember that companies cannot just ignore your concerns; they must review and address them in some way. If there is no such mechanism in your area, or if you have already used the company grievance mechanism but feel your complaint has not been resolved satisfactorily, there are other recourse mechanisms available. Depending on your country context, institutions such as a national commission for human rights or an environmental management/protection agency often have specific complaints procedures that should be accessible to local communities.



IMPORTANT: There is a variety of international mechanisms to address project grievances, but to use them effectively communities need to know what they can and cannot do, and be well-organized.

If all operational-level and government grievance mechanisms are not an option (for whatever reason), there are a number of other international-level grievance mechanisms within international organizations, and regional, multilateral development banks and human rights commissions:⁸²

- a. **World Bank Inspection Panel:** investigates complaints from communities or any group of two or more people who believe they are or are likely to be harmed by a project that is financed by either the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA).
- b. **Compliance Advisor Ombudsman (CAO):** addresses social and environmental concerns from communities about projects that are financed by either the International Finance Corporation (IFC) or the Multilateral Investment Guarantee Agency (MIGA).
- c. **Committee on Freedom of Association (CFA):** handles complaints from government/workers'/employers' organisations that allege an International Labour Organization (ILO) member state has violated workers' rights.
- d. **National Contact Point (NCP):** country-based institution within the Organisation for Economic Co-operation and Development (OECD) that deals with complaints of breaches of the OECD Guidelines on Multinational Enterprises ('OECD Guidelines') against companies from or operating in an OECD or adhering country.
- e. **Independent Review Mechanism (IRM):** addresses complaints from communities or any group of two or more people about a project that is financed by the African Development Bank (AfDB).
- f. **Independent Consultation and Investigation Mechanism (MICI):** investigates complaints by individuals or communities adversely affected by projects funded by the Inter-American Development Bank (IDB);
- g. **Accountability Mechanism (AM):** addresses concerns from communities about direct, material and adverse harm from projects financed by the Asian Development Bank (ADB);
- h. **African Commission on Human and Peoples' Rights (ACHPR):** reviews complaints by individuals, communities and member states regarding violations of the African Charter on Human and Peoples' Rights.
- i. **Inter-American Commission on Human Rights (IACHR):** can request member states of the Organization of American States (OAS) to take 'precautionary measures' to prevent irreparable harm to any person or group of people experiencing human rights violations.

Before contacting any of these institutions, it is important to find out which institution in what region is most appropriate for your specific complaint, and to double-check that you have a strong argument based on clear, documented evidence. Moreover, you have to remember that these procedures can take a long time – sometimes several years – and, even though the mechanisms themselves are free, can be costly for community members because of necessary transport, accommodation and other costs. Therefore, if you are considering submitting a complaint, it is recommended to seek advice from a knowledgeable NGO or other trusted partner in your area, who can assist you in the complaints procedure. For further advice, see the material listed under ‘More information’ at the end of this chapter, or contact one of the support providers listed at the end of this guide.

7.4 How Can Communities Help to Transform Conflict?

By seeing conflict as a potential opportunity to transform the company-community relationship and the wider economic system in which relationships are embedded, communities can deal with conflicts more constructively. “The primary task of *conflict transformation* is not to find quick solutions to immediate problems, but rather to generate creative platforms that can simultaneously address surface issues and change underlying social structures and relationship patterns.”⁸³ One concrete way to do this is for communities to enter into a series of focused dialogue forums with the company and, where useful, to invite government to participate as well.



INFO: Dialogue fora between communities, companies and government can help to identify shared interests and transform conflict.

Sustained dialogue will prevent escalation and offer the space to handle conflict and find solutions for burning issues. Stakeholder representatives come from different backgrounds and have different interests; therefore, dialogue needs to begin with the search for common ground for shared interests and needs.

The stakeholder representatives who participate in the dialogue meetings need to have the capacity to engage in dialogue and must have the trust and support of those they are representing. For communities in particular it is important that those who represent them must meet with the wider community or representative community structures beforehand to clarify roles, agree on common positions regarding the project or key contentious issues, and articulate shared messages. Moreover, as mentioned in Chapter 5, it is critical that a community sticks together and works inclusively. Often dialogue needs a driving force, i.e. a trusted personality or institution capable of bringing an idea forward. Look for those personalities or institutions and bring them on board.

A sustained inclusive dialogue process that is sensitive to local customs and time frames can help communities to:

- sensitize other stakeholders so that they perceive you as rights-holders and genuine project partners;
- build trust and relations with the other stakeholders;
- find common interests;
- agree on conflict issues and causes;
- allow creative problem-solving;
- allow collective decision-making;
- manage potential conflict in its early stages;
- continuously improve impact mitigation measures and communication strategies.

More information

- Davis, Rachel and Daniel Franks (2014) *Costs of Company-Community Conflict in the Extractives Sector* (Harvard Kennedy School, CSR Initiative: Cambridge MA). Available at: https://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf
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- International Dialogue on Peacebuilding and Statebuilding (IDPS) (2015) *International Standards for Responsible Business in Conflict-Affected and Fragile Environments*. Available at: http://www.pbsbdialogue.org/media/finder_public/6f/96/6f96d1ad-45bb-48ae-8614-8d84d6f7b2e9/id-rbc.pdf
- For a more detailed overview of the above-mentioned international-level grievance mechanisms, including a step-by-step guide on filing a complaint, see: <http://www.grievancemechanisms.org>

USEFUL RESOURCES

There are many international and local civil society organizations as well as individual consultants specialized in assisting communities affected by oil, gas and mining projects. The following NGOs and advisory organizations are active in multiple countries, have relevant publications and specialized staff that can respond to specific requests related to the social aspects of oil, gas and mining projects as well as other energy and large-scale infrastructure projects. Depending on your community's request, these organizations should be able to advise you on, or at the very least refer you to, other local NGOs and community-based legal support groups as well as relevant governmental and regulatory agencies in your area:

- Catholic Organization for Relief and Development Aid (Cordaid): <https://www.cordaid.org/en/>
- Centre for Research on Multinational Corporations (SOMO): <http://www.somo.nl>
- CommunitiesFirst: <https://communitiesfirst.net>
- Earth Rights International: <https://www.earthrights.org>
- Earthworks: <https://www.earthworksaction.org>
- Independent Social Performance: <http://independentsp.org/>
- International Association for Impact Assessment (IAIA): <http://www.iaia.org>
- International Institute for Environment and Development (IIED): <http://www.iied.org>
- International Senior Lawyers Project (ISLP): <http://www.islp.org>
- Natural Justice: <http://naturaljustice.org>
- Namati: <https://namati.org>
- Oxfam Australia: <https://www.oxfam.org.au/what-we-do/mining/>
- Oxfam America: <http://politicsofpoverty.oxfamamerica.org/category/resource-rights/>
- Publish What You Pay (PWYP): <http://www.publishwhatyoupay.org>
- Timu – Community Development Associates: <http://www.timu-development.org>

NOTES AND REFERENCES

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- 9 Information in this paragraph is derived from Evelyn Dietsche, Samantha Dodd, Dan Haglund, Mark Henstridge, Maja Jakobsen, Esméralda Sindou and Caroline Slaven (2013) *Topic Guide: Extractive Industries, Development and the Role of Donors* (OPM: Oxford).
- 10 Extractive Industries Transparency Initiative (EITI) is the main (voluntary) international standard for promoting transparent and accountable natural resource revenue management. See: <https://eiti.org>
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- 55 See Reddy et al. (2015), op.cit., pp. 156–167.
- 56 IFC (2012) *Guidance Note 5. Land Acquisition and Involuntary Resettlement* (IFC: Washington DC), GN22, p.9.
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ABOUT CORDAID

Cordaid strives to end poverty and exclusion. We do this in the world's most fragile and conflict-affected areas as well as in the Netherlands. We engage local communities to rebuild trust and resilience and increase people's self-reliance. Our professionals provide humanitarian assistance and create opportunities to improve security, healthcare and education and stimulate inclusive economic growth. We are supported by 288.000 private donors in the Netherlands and by a worldwide partner network. This gives us the leverage and implementing power to solve problems and create structural change in the most challenging settings.

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