

**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



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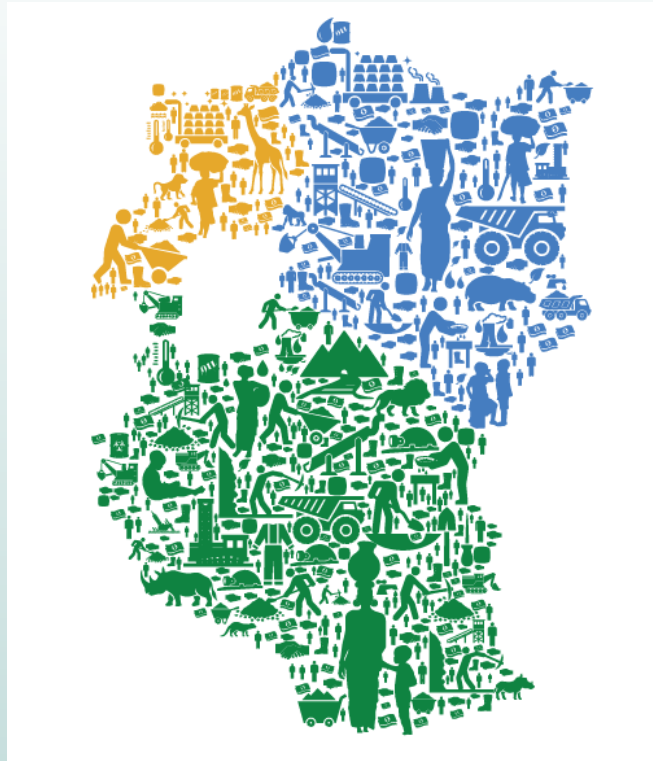
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Agreements with Communities (Community Agreements, Impacts Benefit Agreements, etc.)

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What you'll learn....

- ❖ What types of agreements are there?
- ❖ What are the benefits of certain agreements?
- ❖ Steps to reaching an agreement
- ❖ Elements of an agreement
- ❖ Roles and responsibilities
- ❖ Inherent risks and challenges
- ❖ Types of financial payments
- ❖ Existing examples of agreements
- ❖ Brief overview - Impact Benefit Agreements
- ❖ Lessons learned



Benefits of Community/Company Agreements

Greater project certainty and improved risk management

- Access to land, permits, approvals
- Tool for meeting legal and other obligations

Established framework for relationship between company/community

- Clarifies roles and responsibilities of all parties
- Clarifies expectations
- Provides an accountability mechanism and can give set of mutual performance indicators

Established framework for engagement

- Defines rules of engagement between company and the community
- Sets out a dispute resolution process
- Creates a set of reciprocal obligations

Clear benefit sharing framework

- Shares responsibility for program delivery and outcomes
- Provides clear mechanism for tracking and measuring outcomes against mutually established criteria

Build capacity and knowledge

- Provides community capacity to engage and negotiate
- Ensures better local knowledge to help with permitting process, improve project design.



Types of Agreements

Comprehensive of All Aspects of Company-Community Relationship

Less Comprehensive

Scope	Delivery of projects	+ Engagement protocols, conflict resolution	++ community input into project, "any" aspect of relationship
Benefit Focus	Community Projects	+ employment & procurement	++Revenue revenue or equity sharing
Roles & Reps.	Mainly on Company (dependency on company)	Some roles and responsibilities of company AND community	Mutual responsibilities of company AND community (mutual dependence)
Negotiations	One-off negotiation	Renegotiation in case of need/exception	Clauses around engagement remain for LOM: benefits renegotiated every 5 years
Governance	Board with both company and community reps.	+ Oversight committee	Company supports community setting up their own governance system
Binding	No	Sometimes	Legally enforceable
Company view of community	Receiver of Support	Most important stakeholder	Partner



Steps To Reaching an Agreement



Agreements throughout LOM

Agreements are living documents where benefits are renegotiated periodically. Engagement and other provisions remain constant for LOM

Constant through LOM

- Engagement
- Governance
- M&E
- Dispute Resolution

Renegotiated Periodically

- Benefit Sharing
- Targets



Elements of an Agreement

1. Introductory provisions (intent, definitions, beneficiaries)
2. Engagement (principles, protocols etc.)
3. Employment and training
4. Economic development and business opportunities
5. Social, cultural and community support
6. Financial provisions and equity participation
7. Additional issues important to parties (e.g. environmental protection, cultural heritage)
8. Other substantive and procedural provisions (agreement amendments, governance, M&E, dispute resolution)



Mutual Roles & Responsibilities

Agreements can impose responsibilities on both parties, the company and the community. For example....

Company

Agree to establish community grievance committee

Agree to local employment targets

Agree to include local perspectives in project design

Agree to be transparent about company decisions

Community

Agree to first go through grievance mechanism when have complaints

Agree to send children to school

Agree to participating in training to understand design issues and to attend meetings

Agree to ensure that information is broadly shared within the community



Inherent Risks & Challenges

Risk/Challenge	Mitigation
Time and cost may be significant, depending on community capacity	Develop a pre-negotiation agreement – include provisions for funding, timelines, training programs.
Poor/lack of implementation or lack of enforcement	Create accountable governance arrangements to facilitate review & implementation of the agreement
Lack of community interest in the agreement and its implementation	Ensure community participation in the process, including informed decision-making in negotiations
Perceptions that communities have been misled/forced into signing an agreement	Start early - research and consult widely to identify all communities and the individuals who will represent them
Risk that agreement will not have legitimacy	Start early - facilitate community's articulation of how it wants to be involved in and benefit from the process; share information on process widely



Dimensions	Value How much benefit is there to share, and with whom?	Form In what ways can we share those benefits?	Time When can we share benefits, and how will that change over time?
Objectives	<ul style="list-style-type: none"> ▪ Fairly distribute risk and reward between Company and its stakeholders ▪ Fairly distribute risks and rewards amongst external stakeholders based on the degree to which each stakeholder is impacted ▪ Address information gaps which can create perceptions of inequality 	<ul style="list-style-type: none"> ▪ Make sustainable investments that benefit communities beyond the lifecycle of the mine ▪ Deliver benefits in forms that benefit stakeholders while also building support company 	<ul style="list-style-type: none"> ▪ Ensure a sustained, consistent level of benefit sharing across the lifetime of the mine ▪ Ensure ample advance notice of impacts of new technologies and cost reductions on community benefits



Benefits can be shared between a Company, local communities and governments in a variety of forms

Value distribution	Value recipients	Form	Definition	Examples	Effect on levels of support for Barrick		
					Pros	Cons	
Retained surplus	Company	Physical capital	<ul style="list-style-type: none"> Infrastructure that increases the economic potential of a community 	<ul style="list-style-type: none"> Water/sewage treatment, roads/bridges, sports facilities 	<ul style="list-style-type: none"> Outputs can be clearly pointed to as a benefit of the mine 	<ul style="list-style-type: none"> Unlikely to be maintained in the absence of Company 	<p>Sustainable wealth enables independence from mining companies during and after the life of a mine, and includes investments that align with development goals</p>
Community initiatives	Local community	Human capital	<ul style="list-style-type: none"> Investments that bolster the know-how and capabilities of members of local communities 	<ul style="list-style-type: none"> Education and training programs, economic development programs 	<ul style="list-style-type: none"> Create employment opportunities and readiness not directly linked to the mine 	<ul style="list-style-type: none"> Majority of programs have poor track records for job placement and creation 	
Local procurement	Local community and Company	Financial capital	<ul style="list-style-type: none"> Endowment funds that create ongoing returns to replace the income generated by the mine 	<ul style="list-style-type: none"> Endowment funds that create ongoing returns to replace income generated by the mine 	<ul style="list-style-type: none"> The most sustainable form of wealth—will last long past the life of the mine if properly managed 	<ul style="list-style-type: none"> Attractive targets for nationalist governments Not likely to be well managed 	
Local employment		Employment and procurement	<ul style="list-style-type: none"> Cash injected into local economies, depending on skill availability 	<ul style="list-style-type: none"> Wages/benefits through employment of locals 	<ul style="list-style-type: none"> Clearly understood to be a benefit provided by the mine 	<ul style="list-style-type: none"> The least sustainable form of wealth—benefits disappear when the mine shuts down 	<p>Immediate wealth creates a dependency relationship with mining companies</p>
Royalties	Government	Taxes	<ul style="list-style-type: none"> Funding to support government programs 	<ul style="list-style-type: none"> Income tax 	<ul style="list-style-type: none"> Creates a motivated constituency of supporters of the mine 		
Taxes		Royalties	<ul style="list-style-type: none"> Funding to support government programs 	<ul style="list-style-type: none"> Land royalties 			



Types of Financial Payments

Fixed cash payments

Royalty payments

- Gross overriding royalty (paid from gross revenues)
- Based on volume of outputs
- Based on value of production
- Based on profits

Equity sharing

- Can be distributed to trust funds, community foundations
- PNG example : equity paid to landowners and into trust funds managed by the state
- Canada example: equity held by Indigenous community corporations (acquired either through carried interest or a purchased stake in company)



Examples of Agreements

Argyle Mine, (Australia)	<ul style="list-style-type: none"> • Signed numerous pre-cursor agreements to address legacy issues and to conduct extensive studies to identify community members, cultural heritage and traditional landowners, environmental and social impacts. • Comprehensive agreement governing all aspects of relationship and imposing responsibilities on all parties. • Includes agreed upon consultation and communication tools for ongoing engagement, decision-making.
Newmont Ahafo Community Development Agreement (Ghana)	<ul style="list-style-type: none"> • Focuses on community development benefit sharing: payments include US\$1/oz gold from mine sold; 1% of company's net pre-tax income and any gains over US\$100,000 from assets sold. • Responsibilities lie only with the company. • Established Agreement Forum responsible for implementation of the agreement.
Diavik Agreement (Canada)	<ul style="list-style-type: none"> • Includes local employment and training quotas and targets. • Establishes Advisory Board (of representatives of all parties) responsible for monitoring mine's progress and social and environmental impacts.
Liquid Natural Gas Project (PNG)	<ul style="list-style-type: none"> • Equity distributed to landowners and a 'future generation' trust fund and investment trust fund managed by PNG state corp.
Raglan Agreement (Canada)	<ul style="list-style-type: none"> • Includes provisions for employment, training, contracting opportunities, environmental mitigation, mine operating procedures. • Fixed cash payments (varying per year of production) plus 4.5% profit sharing of annual operating cash flow (agreement includes provisions for calculation).



Overview of Impact and Benefit Agreements (IBAs)

What is an Impact and Benefit Agreement (“IBA”)?

IBAs can also be called Participation Agreements, Mutual Benefit Agreements, Relationship Agreements, etc.

Contracts that outline:

1. Impacts of a project on a First Nation;
2. Obligations of the proponent and the First Nation;
3. Benefits that will be realized by the First Nation; and
4. Benefits are provided as accommodation for environmental impacts and can include financial accommodation provisions and business opportunities preferences



Benefits of IBAs

Effective IBAs will:

- Provide an effective framework for cooperation with a company
- Minimize adverse social and environmental impacts of a project
- Maximize business opportunities, as well as economic, employment and training benefits available to an impacted community
- Establish firm requirements to “prefer” cost competitive and qualified community businesses
 - drafting of preference language is key



Implementation of IBAs

Common pitfalls:

- Lack of resolve despite a good agreement
- Imprecise drafting
- Lack of monitoring and review initiatives
- Lack of incentives to meet objectives
- Lack of funding and adequate resources
- Unclear responsibilities
- Lack of involvement of key personnel
- Failure to take a long-term perspective



Benefits of IBAs for Companies

- Provides overall certainty for the project
- Gives social license to proceed
- Gets community support during life of project
- Full support of impacted group on accessing Environmental permits
- Easier to acquire financing for the project
- Prevents disruptions during life of project



IBAs - Lessons Learned

- Process as important as outcome
- It takes time to effectively implement agreements
- Limited capacity means a few individuals do all the heavy lifting
- The signing of the agreement is the beginning of a long term partnership



Resources

- Rio Tinto – Why Agreements Matter
- IBA Community Toolkit
- Mining Community Development Agreements Sourcebook (World Bank)

