



Supporting Inclusive Resource Development (SIRD)
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TRAINING PROGRAM
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COMMUNITY CONSULTATION & ENGAGEMENT IN KENYA:

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*... "They made us be happy and clap like
fools, dance as if we were trained
monkeys....,"*

A statement from Chief Sunday Inengite (81) from Oloibire who was there in June 1956, when the engineers first arrived and when the 1st commercially viable Oil discovery was made in Nigeria.

▶ **ABSTRACT:**

1. WHAT IS COMMUNITY CONSULTATION & ENGAGEMENT?
 - Definition and Origin (Brief Overview)

2. HOW IS IT EFFECTED?
 - The Who, The Why and The When
 - Kenyan Context (Lex/ Practice)

3. BENEFITS (If any)
 - Challenges
 - Proposed Fixes

Community Consultation & Engagement:

- Getting stakeholder engagement right is a key component in securing a social licence to operate for companies in the extractive industry. Governments also have their own responsibilities to ensure communities are adequately consulted before decisions are made on extractive industry developments in particular regions.
- Public participation, consultation and other forms of community engagement represent a constructive dialogue between companies, communities and relevant government departments, and ensuring that this leads to positive environmental and social outcomes for local populations and broader society by giving a voice to those directly affected by the development of natural resources.

Consultation Vs. Consent

- Meaningful Consultation
 - Transparency
 - going beyond discussion of risks and impacts towards partnerships, development plans and negotiation of benefits

NUREMBERG TRIAL

“During World War II, German physicians conducted pseudoscientific medical experiments utilizing thousands of concentration camp prisoners without their consent. Most died or were permanently crippled as a result. Most of the victims were Jews, Poles, Russians, and also Roma (Gypsies). ... Sixteen of the doctors were found guilty. Seven were sentenced to death. They were executed on June 2, 1948.”

<http://www.ushmm.org/information/exhibitions/online-features/special-focus/doctors-trial>

“The suspects were involved in over 3,500,000 sterilizations of German citizens ... Several of the accused argued that their experiments differed little from pre-war ones and that there was no law that differentiated between legal and illegal experiments.”

http://en.wikipedia.org/wiki/Nuremberg_Code [emphasis added]

PRINCIPLE 1 OF THE NUREMBERG PRINCIPLES

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him/her to make an understanding and enlightened decision.

This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonable to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

WHAT IS EXPECTED FROM SUCCESSFUL COMMUNITY CONSULTATION & ENGAGEMENT

- Hire local staff and staff with skills and experience in, for example, anthropological research (within the local community), where appropriate, so as to build and embed understanding of the local context within the company or government department.
- Make sure that company and government personnel, including senior managers, have experience of engaging with local people in field situations to ensure that decision-making is sensitive to local realities.
- Ensure that consultants preparing impact assessments and other documents spend time engaging with local communities and tailor their conclusions and recommendations to local contexts, rather than basing them on standard conclusions used elsewhere.
- Consider the field experience, skills and capacities, as well as time spent with communities by managers and operational staff, as part of investors' due diligence.

MEANINGFUL CONSULTATION:

- “Meaningful consultation is about understanding the context of a project and local peoples’ way of life, so as to understand the potential impact of the project on their lives. This allows you to place value on that, adapt your plans where possible, and ultimately ensures you can continue to operate both in the short and the long-term.”

KENYAN CONTEXT:

- Public participation is mandatory **before any development is permitted.**
- Grounded firmly in the Constitution
- Environmental Management and Coordination Act, Section 59 (Publication of EIA Report for comments) as read with Section 6 of the 2nd Schedule
- Petroleum Act Section 100 – 104 as read together with Article 40 of the Constitution (Rights to property) of the Constitution and Part VIII of the Land Act 2012 (procedure for compulsory acquisition).
- Sections 37 – 39 of the Mining Act (No. 12 of 2016) – Consent requirement, consultation made mandatory.
- Case Review: Suit filed against the NLC vis a vis compulsory acquisition of land in Turkana

WHEN must consent be sought

- Before undertaking or permitting any activities related to the exploration or exploitation of such resources pertaining to the communities within and around the affected lands.
- Consultation should take place during the first stages of the development or investment plan and not only when it is necessary to obtain the community's approval, if this were the case, since prior warning would allow sufficient time for internal discussions within the community.
- The process should take place before undertaking an action or implementing a project that is likely to affect the communities, including legislative measures, and that the affected communities must be involved as early as possible in the process.

HOW must consent be sought

- International best practice: In good faith and in a manner appropriate to the circumstances, with the aim of reaching an agreement or obtaining consent regarding the proposed project.
- Slide 8 refresher.

HOW must consent be sought?

Kenyan Context:-

- Through statutorily established institutions and representative bodies.
- Following procedures laid out in the law:-
- Notice Requirements, beneficiary identification and value determination (who should receive compensation) EIA
- Payment Directions (set period to remit compensation) Section 102 (c) Petroleum Act
- Objection (Avenues and Timelines) Section 103 Petroleum Act
- Public Interest supersedes individual interests.

WHO must give the consent

Who are the communities affected? Local Community

- The Petroleum (Development, Production and Exploration) Act defines local community as:
 - A people living in a sub county within which a petroleum resource under this Act is situated_ and are affected by the exploitation of that petroleum resource;
 - Section 117 details the rights ancillary to the community vis a vis up stream development
- How should they be determined?

COMMUNITY TYPES

TYPE	STRUCTURE	LEGAL RECOGNITION
ORGANIZED GOVERNMENT	UNDERSTANDING OF WHO LEADERSHIP IS AND HOW DECISIONS ARE MADE	SOLID
TRADITIONAL	CLEAR UNDERSTANDING OF WHO LEADERSHIP IS AND HOW DECISIONS ARE MADE	VARIABLES GREATLY
AMORPHOUS	VERY LITTLE UNDERSTANDING OF WHO LEADERSHIP IS OR HOW DECISIONS ARE MADE	NONE

WHAT ARE THE BENEFITS OF COMMUNITY CONSULTATION AND ENGAGEMENT

- Enabling a community to develop its own vision and to plan for its own future development in the context of an extractive industry project (starting at pre-approval stage, where the question of issuing exploration licences remains open)
- Helping local people to understand a project and become more aware of a company's plans and how they might affect the community (positively or negatively)
- Creating a space, building trust and relationships and agreeing terms for ongoing dialogue and negotiation over costs/benefits/impacts
- Enabling community consent to be elicited for a project and maintaining consent over time
- Enabling communities to secure their rights; rebalancing power between stakeholders
- Developing a concrete agreement, joint strategy, solutions and mutual decisions, for example on benefit-sharing, job creation and future development options
- Resolving issues and community concerns effectively; ensuring community feedback is incorporated into corporate/government policy and practice

Source Link: <https://gsdrc.org/document-library/meaningful-community-engagement-in-the-extractive-industries/>

THE END!!!

**YOU CAN WAKE UP
NOW!!!**

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