



Community development agreements

Guidance document for the oil and gas industry

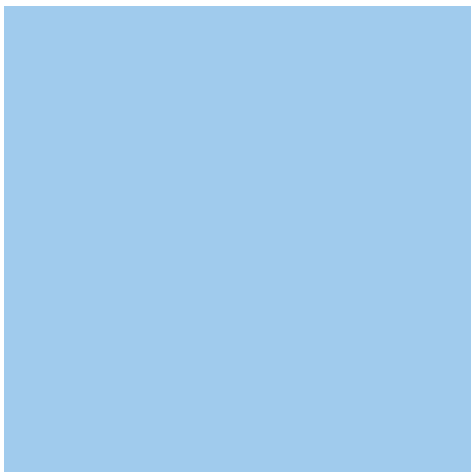


Social
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Advancing environmental
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Executive summary

OVERVIEW

From 2015–2016 IPIECA undertook a research project to review the content of its 2008 guidance, *Creating successful, sustainable social investment*. One of the findings of the research was that formal community development agreements (CDAs) are likely to become more of a norm than an exception in the near term. This is a result of increasing government intervention in social investment, and a natural progression transforming what were once innovative and voluntary practices a decade ago, towards best practices widely adopted within the industry, and finally into regulations.



The research project highlighted five key features of good CDA practice:

- The agreement is arrived at through fair negotiation and/or facilitation.
- Communities, or community representatives, are engaged in the negotiations.
- The outcome is formalized in a written document, which may, but not always, take a legal form.
- There is an intention to create mutual obligations between the parties.
- The agreement includes provisions that address broader development objectives.

While each CDA will be specific to a company, community and operating context, IPIECA members noted that ‘the answers are always different, but the questions are always the same’. Until now, field representatives have improvised and reinvented the wheel each time. Therefore, IPIECA decided to identify the common steps that a company needs to take, along the project life cycle, to build positive outcomes for both the company and the community.

The objective of the CDA project was to develop guidance to assist in identifying the typical steps necessary for the oil and gas industry when negotiating and structuring agreements with communities. This guidance covers the following five key areas:

- criteria for when a company would consider entering into formal agreement with a community;
- questions that should be asked at each phase of the oil and gas project life cycle;
- criteria for determining the content, structure and timeline of agreement;
- considerations for maintaining (monitoring and reporting) and exiting agreements, e.g. how milestones or other mechanisms can be constructed into CDAs to mitigate the risks associated with long-term commitments over multiple phases of development; and
- considerations for engaging with vulnerable groups.

SECTION 1: INTRODUCTION

The introductory section sets out the purpose of this guidance: to equip oil and gas practitioners with knowledge of leading practice in agreement-making and implementation. It defines a CDA as a formal agreement, negotiated in good faith, between resource companies and communities. The aim of a CDA is to minimize negative impacts and advance local socio-economic development. This section also introduces the CDA tool—a set of processes designed to help oil and gas companies decide whether a CDA is appropriate, and understand how to successfully negotiate and implement a CDA.

SECTION 2: THE BUSINESS CASE FOR COMMUNITY DEVELOPMENT AGREEMENTS

The purpose of this section is to highlight the business case for CDAs, and how they can help to serve and achieve company interests. CDAs can serve as a powerful mechanism for delivering benefits to the company as well as positive and equitable outcomes for affected communities. They can promote shared understanding, help to diffuse tensions, and provide structure and clarity with regard to community development initiatives, compensation and impact mitigation.

This section helps practitioners to determine when it is appropriate for the company to establish a CDA. In some jurisdictions, the business case for CDAs can be compelling if there is a requirement for agreements between extractive companies and the community. Where CDAs are not required by law, companies should consider whether CDAs are appropriate to the circumstances. The section also discusses the potential benefits, costs and risks of implementing a CDA. It closes by highlighting the relevance of CDAs to the offshore oil and gas context.

SECTION 3: COMMUNITY DEVELOPMENT AGREEMENT TOOL—AN OVERVIEW

This section provides an overview of the CDA tool. The tool aims to facilitate a systematic approach that directs practitioners to achieve a set of critical preconditions at different stages of a CDA process. It introduces the five elements of the CDA tool and indicates the degree of effort that will likely be required for each element during the different stages of a typical petroleum project. It also provides a summary of the rationale, objectives and mechanisms behind each of the five elements of the CDA tool. It closes by highlighting the key factors for ensuring a successful CDA.

SECTION 4: COMMUNITY DEVELOPMENT AGREEMENT TOOL—THE FIVE ELEMENTS ON DETAIL

This section is the main bulk of the guidance document. It provides a detailed discussion of the five elements of the CDA tool, which are:

1. **Knowledge and understanding of regulatory and community context:** In developing a CDA, the company will need to gain a detailed understanding of the legal, social and cultural environment in which it operates.
2. **The company's internal capacity and management systems:** Agreement processes require companies to be adequately equipped and well resourced. Competent staff, organizational capability and commitment from senior leaders is critical to success.
3. **Inclusive external engagement, community representation and capacity:** Regular and inclusive engagement ensures that the business and affected communities are informed throughout the life of the agreement, as well as helping to avoid misunderstanding and conflict, and ensuring that commitments are met.
4. **Negotiating content:** The content of a CDA can vary widely depending on the context of the agreement. The main objective is to reach an agreement through inclusive, equitable and good faith negotiations.
5. **Implementing, monitoring and reviewing agreements:** It is essential that companies build management structures that ensure systematic implementation of agreement provisions. Leading practice is based on an 'implement, monitor, review and adjust cycle', whereby the outcomes of implementation are measured, and corresponding adjustments are made to approaches and practices.

APPENDIX: DIFFERENCES BETWEEN THE MINING SECTOR AND THE OIL AND GAS SECTOR

Many existing resources cover multiple dimensions of agreement-making and community development. The majority focus on mining, or otherwise more broadly on the 'extractive industries'. While most of the principles and approaches may also be relevant for the oil and gas industry, this appendix summarizes the key differences between the mining and oil and gas sectors.

REFERENCES AND FURTHER READING

This section lists various sources of information referred to throughout the guidance document and provides links to a range of additional resources for further reading. It also highlights where information in the resources relates to the different elements of the CDA tool.

Introduction

This document aims to equip practitioners with knowledge of leading practice in agreement-making and implementation, and provides guidance on how to successfully negotiate and implement a community development agreement.

Introduction

ABOUT THIS DOCUMENT

This document provides guidance on establishing and implementing community development agreements in the oil and gas sector.

The purpose of this document is to equip practitioners with knowledge of leading practice in agreement-making and implementation. It provides a tool to help oil and gas companies decide whether a CDA is appropriate, and understand the actions that need to be taken to successfully negotiate and implement a CDA.¹

By promoting improved practice and greater consistency among practitioners, this guidance document aims to:

- foster constructive relationships between oil and gas companies and communities; and
- increase opportunities for the sustainable development of communities neighbouring oil and gas operations.

This document is aimed primarily at practitioners in company departments with responsibility for community and social performance functions. It is also relevant to other personnel supporting company social performance including lawyers, finance officers, human resources staff, environmental experts and indigenous affairs personnel.²

WHAT ARE COMMUNITY DEVELOPMENT AGREEMENTS?

There is no consistent terminology to define and describe CDAs or similar types of agreements. For the purposes of this document, CDAs are defined as formal agreements negotiated in good faith between companies and communities in relation to resource projects. CDAs aim to minimize negative impacts and advance local socio-economic development.

Although 'community development agreement' is an accepted generic term, other terminology is also used (see Box 1). Terms may vary with location, reflect legislation or emphasize certain characteristics of the agreement (for example, by including the word 'indigenous' in 'indigenous land-use agreements' in Australia).

A community development agreement is a formal agreement, negotiated in good faith, between resource companies and communities. The aim of a CDA is to minimize negative impacts and advance local socio-economic development.

Box 1 Other terminology used to refer to CDAs

- Voluntary agreements
- Partnership agreements
- Participation agreements
- Impact and benefit agreements
- Indigenous land-use agreements
- Landowner agreements
- Consensus agreements
- Shared responsibility agreements
- Benefit-sharing agreements
- Empowerment agreements
- Community joint ventures
- Local level agreements
- Cooperation agreements
- Community contracts

¹ This guidance document has been informed by a desktop review of literature on CDAs and a survey of IPIECA practitioners. Key resources drawn upon are listed in the *References and further reading* section on pages 46–47 of this document.

² This guidance draws from common lessons learned across the broader 'extractive industries'. While many principles are common to the mining and oil and gas sectors, there are key differences which affect how CDAs should be considered and implemented. This guidance accounts for challenges that are specific to the oil and gas industry. A comparison of the mining and petroleum industries is presented in the *Appendix* on pages 42–44.

The definition of a CDA incorporates the aim of advancing 'local socio-economic development' (sometimes referred to as 'community development'). In this document, socio-economic development means the process of increasing the strength and effectiveness of communities, improving people's quality of life and enabling people to participate in decision-making to achieve greater long-term control over their lives.³

Communities that may be affected by a resource project are not limited to those who live near the project, but may also include those who hold economic, historical, cultural and social ties to the land affected by the project. It is important to recognize that communities are not homogenous. There may be divisions and alliances, and these may be created or exacerbated by potential impacts arising from the project. Consistent with good social performance practice, establishing a good understanding of the social context and the potential project impacts is a key element within the CDA process.

ABOUT THE COMMUNITY DEVELOPMENT AGREEMENT TOOL

The CDA tool is a set of processes that guide companies through initial fact-finding and due diligence, through to negotiation, implementation, monitoring and review. An outline of the tool is provided in Section 3, and Section 4 considers each of the five elements of the tool in detail. Table 1 presents an overview of this document, and lists the five elements of the CDA tool which are discussed in more detail in Sections 3 and 4.

The CDA tool is not intended to be prescriptive, or to set out a linear series of necessary steps. Rather, CDAs need to be tailored to the particular context of the project and affected communities, and the elements of the tool provide practical guidance for a range of situations and various types of projects. The main emphasis of the tool is on instituting a range of effective processes, rather than fulfilling predetermined steps.

Table 1 An overview of this guidance and the five elements of the CDA tool

PURPOSE OF THE GUIDANCE DOCUMENT	
To equip oil and gas practitioners with leading-practice knowledge of how to make and implement CDAs.	Section 1 (pages 6–7)
WHY USE CDAs?	
CDAs can help to deliver mutual benefits to companies and communities. They promote shared understanding, can help to diffuse tensions, and provide structure and clarity with regard to community development initiatives, compensation and impact mitigation.	Section 2 (pages 9–15)
COMMUNITY DEVELOPMENT AGREEMENT TOOL	
An overview of the CDA tool	Section 3 (pages 17–21)
The CDA tool in detail	Section 4 (pages 23–40)
<i>The five elements of the CDA tool:</i>	
1 Knowledge and understanding of regulatory and community context	Section 4 (page 24)
2 The company's internal capacity and management systems	Section 4 (page 27)
3 Inclusive external engagement, community representation and capacity	Section 4 (page 29)
4 Negotiating content	Section 4 (page 32)
5 Implementing, monitoring and reviewing agreements	Section 4 (page 36)

³ ICMM (2012)

The business case for community development agreements

This section sets out how CDAs can serve as a powerful mechanism for delivering benefits to the company, as well as positive and equitable outcomes for affected communities.

The business case for community development agreements

COMPANY INTERESTS SERVED BY CDAs AND OTHER SOCIAL PERFORMANCE TOOLS

Internationally, and across many resource-rich countries, there is a growing expectation that extractive sector companies contribute to the long-term development goals of the regions in which they operate. These expectations are often framed as corporate social responsibility. While it is often understood that it is a duty of companies to contribute to community development, there are also commercial drivers for corporate social responsibility:

- **Development equity:** international agencies and national governments have increasing expectations that resources companies contribute to the development of local communities and provide access to project-related benefits. This is especially the case for vulnerable and/or marginalized groups.
- **Increased public scrutiny in the digital age:** the digital age offers the general public unprecedented access to information. Widespread use of social media places companies under much greater scrutiny than ever before. Regional, national and international civil society groups have greater ability to represent disgruntled communities.
- **Shareholders' demand for social responsibility:** increasingly, shareholders and other investors are also demanding that companies demonstrate social responsibility.

- **Business and operational strategy:** there are diverse commercial advantages in securing (and maintaining) community support for a project, including: land access, security of investment, and community support in the event of unforeseen circumstances such as accidents and mishaps, or unexpected downturns.
- **Regulatory requirements:** globally, there is a propensity towards increasing national legislation and regulatory requirements for managing social performance (in particular, through agreements with the community).
- **Alignment with international standards and guidelines:** there are a range of international standards to which lenders expect oil and gas companies to subscribe (see Box 2). Many of these standards set out requirements for consultation and integration with communities—including in some instances a requirement to obtain free, prior and informed consent (FPIC). The CDA process can support alignment with these requirements.⁴

CDAs can be an appropriate mechanism for contributing to the achievement of these interests, although other mechanisms may also be considered depending on the circumstances. The following pages address these points.

Box 2 Key international standards and guidelines

- World Bank Operational Policies
- International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability
- The Equator Principles
- Voluntary Principles on Security and Human Rights
- United Nations (UN) Guiding Principles on Business and Human Rights

⁴ Bocoum, B. *et al.* (2012a).

Section 2

The business case for community development agreements

HOW CAN CDAs HELP TO ACHIEVE COMPANY INTERESTS?

A CDA can serve as a powerful mechanism for delivering benefits to the company as well as positive and equitable outcomes for affected communities. The agreement-making process and effective implementation deliver a systematic approach to impact management and benefits sharing, with obligations and responsibilities clearly defined in order to promote accountability. CDAs can also give clarity to beneficiaries of community development initiatives by providing structured processes to achieve well-defined outcomes. CDAs can support companies in:

- gaining community support over the project life cycle;
- increasing confidence in the community over local benefits from the project;
- allowing the project to proceed without community disruption or cost of disputation;
- increasing certainty over investment by the company;
- increasing ability to secure access to further resources; and
- achieving reputational advantage as a responsible operator.

The business case for CDAs is compelling in jurisdictions requiring agreements between extractive companies and the community. For example, in Papua New Guinea and Bolivia, land access for extractive industries is contingent upon making and implementing agreements with communities. Companies are required not only to mitigate adverse impacts, but also to engage with local governments and communities over social and economic benefits. In settler countries with indigenous populations, such as Australia, Canada and the United States, legislation mandates agreements with indigenous groups in certain areas where they hold rights and interests in land proposed for development. Companies must secure CDAs with relevant community groups, or else risk significant delays and potentially lose access to the resources.

CDAs can be a powerful mechanism for delivering benefits to the company as well as positive and equitable outcomes for affected communities.

Some jurisdictions require CDAs. Where CDAs are not required by law, companies should consider whether CDAs are appropriate to the circumstances.

Even where there are legislative requirements for CDAs, strong corporate commitment is needed for resourcing the agreement processes and subsequent implementation. Long-term sustainable outcomes for the community, and the reciprocal benefits to companies, are best achieved by the company recognizing the strategic opportunity that CDAs can provide, and committing resources accordingly.

In jurisdictions where agreements are not mandated, developing the business case for agreements should draw on the specific context of the operation. Each agreement scenario needs to be assessed according to the context. Clarity over the intent and goals of a CDA is paramount, and it is important that these align with the development priorities of local communities. Consideration should also be given to how other, non-agreement, mechanisms might help to achieve similar development outcomes.

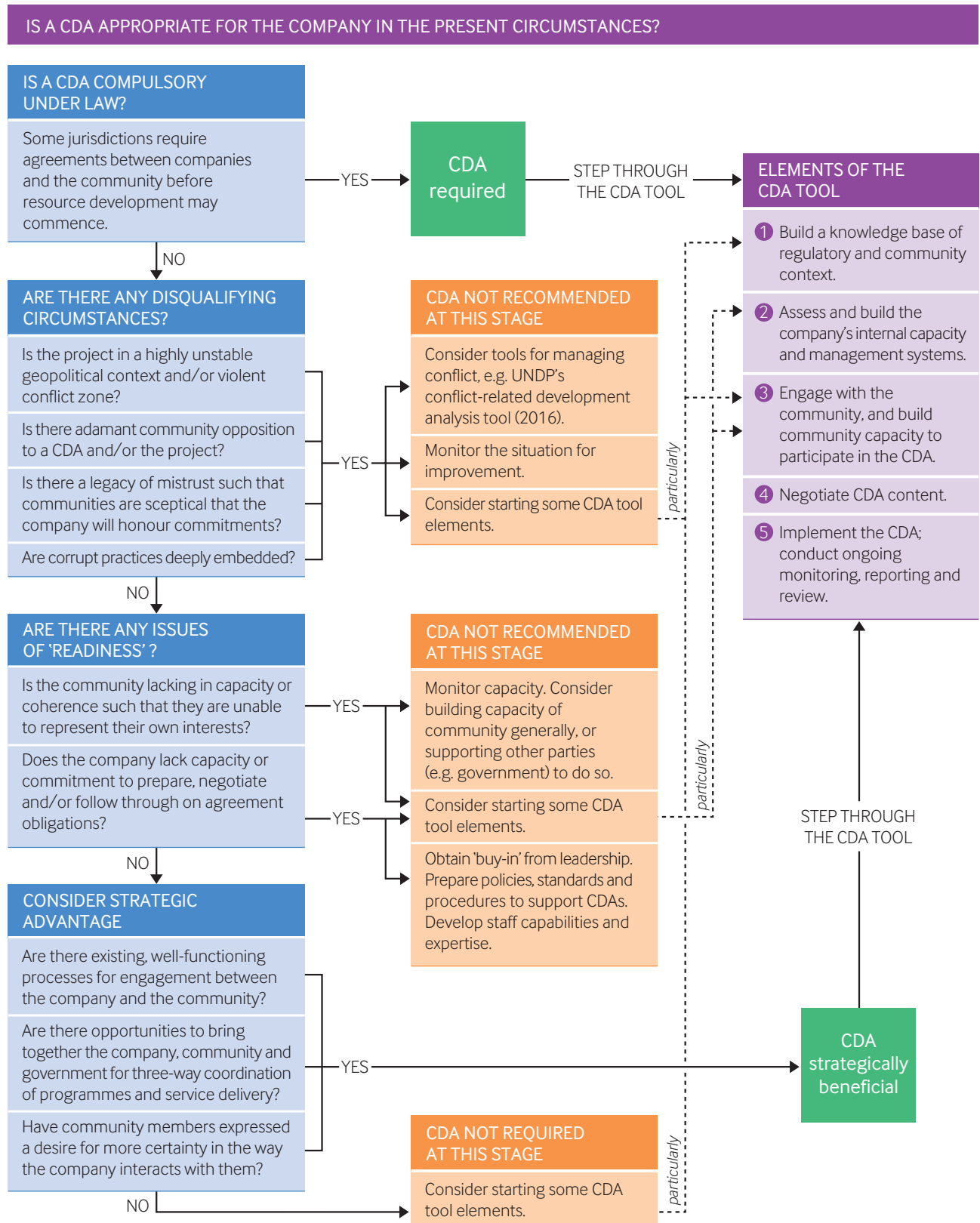
WHEN ARE COMMUNITY DEVELOPMENT AGREEMENTS APPROPRIATE?

There may be strategic benefits for oil and gas companies in seeking formal agreements with local communities, even where agreements are not a regulatory requirement. CDAs can be beneficial where companies need to proactively manage a degree of mistrust or conflict with communities, and/or where governance structures for engagement are ineffective. Figure 1 on page 12 illustrates a CDA decision-making process based on legal and other project circumstances.

Section 2

The business case for community development agreements

Figure 1 CDA decision tree



Section 2

The business case for community development agreements

When assessing the business case for CDAs, it should be remembered that CDAs can be used for many purposes, including:

- forming positive relationships with local communities, establishing platforms and protocols for communication and engagement, and addressing social, economic and environmental impacts of the project;
- responding to locally-recognized indigenous or tribal rights and interests through the establishment of voluntary CDAs;
- addressing the gap where there are no national regulations or guidance on how to engage local communities or indigenous groups;
- meeting corporate standards, national laws and regulations, and international lender requirements (e.g. IFC funding, Equator Principles);
- meeting the increasing demands of local content and local training requirements;
- establishing platforms and protocols for communication and engagement, including managing expectations; and
- addressing social, economic and environmental impacts of the project work.

Companies should also consider whether multiple CDAs are appropriate. Multiple CDAs may be required where more than one community is affected (or where more than one community interest is represented), and a multilateral agreement for all communities and interests is impracticable.

BENEFITS, COSTS AND RISKS

Provided that the circumstances are appropriate for CDAs, companies are advised to assess the potential benefits, costs and risks of implementing a CDA (Table 2).

Such an assessment should be undertaken from the perspectives of all parties. Agreements only work if they meet the needs of all parties. Companies and communities alike must be aware of the need to balance costs, benefits and risks when determining whether to seek (or respond to a request for) an agreement. If a CDA does not suit all parties, other strategies may be available. For example, community groups may seek to achieve their desired outcomes through litigation, protest and political lobbying. It is in companies' interests to explore carefully how other parties perceive the situation, and to understand their drivers and constraints.

Table 2 The benefits, costs and risks of seeking agreements from a company perspective

POTENTIAL BENEFITS	POTENTIAL COSTS AND RISKS
<ul style="list-style-type: none"> ● An opportunity to create dialogue, build trust, exchange information and explore other issues. 	<ul style="list-style-type: none"> ● The time and cost required to set up and implement an agreement, particularly where a community has no prior experience or capacity in agreement making.
<ul style="list-style-type: none"> ● A mechanism for holding parties to commitments made, leading to greater certainty and consistency. 	<ul style="list-style-type: none"> ● The community lacks interest in pursuing the development outcomes of an agreement.
<ul style="list-style-type: none"> ● A structured framework for community engagement, which can reduce reliance on individuals to sustain the relationship. 	<ul style="list-style-type: none"> ● Unintended and/or unwanted changes to community power dynamics.
<ul style="list-style-type: none"> ● A mechanism to set up reciprocal obligations, which can help build a sense of shared responsibility. 	<ul style="list-style-type: none"> ● The risk of excluding and marginalizing some community members, in particular minorities and women.
<ul style="list-style-type: none"> ● An opportunity to reduce transaction and operating costs over the longer term. 	<ul style="list-style-type: none"> ● Reduced flexibility and adaptability with regard to community development initiatives.
<ul style="list-style-type: none"> ● An opportunity to develop greater certainty in relation to the project, and its impacts and benefits. 	<ul style="list-style-type: none"> ● The risk that the agreement is not effectively implemented and will lack legitimacy.

Source: adapted from Rio Tinto (2016)

Section 2

The business case for community development agreements

While the business case for agreements will always be specific to the individual company or operation, some themes are common. For instance, the process of establishing agreement can be rewarding. The process can benefit communities with increased capacity to organize and represent their views. Done well, the process can establish working relationships between the company and community, thereby promoting trust and respect.

For these reasons, the agreement-making process is as important as concluding the agreement.

Table 3 summarizes the range of benefits available from a successful CDA process.

Table 3 The benefits of CDAs for companies and communities

TRANSPARENCY AND ENGAGEMENT
<ul style="list-style-type: none">● Establishing a clear framework for positive relationships and engagement between the company and community.● Clarifying roles and responsibilities of the parties.● Helping parties manage expectations, and establishing a transparent and participatory framework with measurable outcomes.● Specifying where benefits will be directed and how they will be allocated.● Helping to build trust and respect between industry and communities, as well as between various stakeholder groups.● Increasing transparency and accountability, thereby enhancing the reputation of the oil and gas industry.
CAPACITY DEVELOPMENT
<ul style="list-style-type: none">● Helping communities to build their capacity for negotiation, agreement-making, and project planning and implementation.● Enhancing consultation and dialogue regarding local development goals, and helping communities articulate their goals and building strategies to achieve them.● Increasing participation of community members and other stakeholders in the determination of how benefits will be managed.● Identifying capacity building needs, e.g. through a capacity needs assessment.● Helping communities understand the oil and gas industry and the constraints under which companies operate.
BUSINESS PRACTICES
<ul style="list-style-type: none">● Helping companies to meet their corporate social responsibility standards (internal and external).● Helping oil and gas companies to build and maintain social acceptance throughout the project life cycle.● Improving project design and implementation through local knowledge and ideas.● Maximizing benefits to communities.
SUSTAINABILITY
<ul style="list-style-type: none">● Facilitating the collection of data, results measurement and the reporting of change over time.● Sharing responsibilities for programme delivery and outcomes through partnerships for community development programmes.● Focusing all parties on long-term objectives and commitments.● Reducing risk and providing certainty to parties in relation to expectations, obligations and outcomes.

Source: adapted from Bocoum, B. *et al.* (2012a).

Section 2

The business case for community development agreements

Some possible risks associated with forming agreements should also be noted:

- Requiring communities to enter into formal agreements can foster a counterproductive environment of mistrust and uncertainty if parties lack commitment to, or understanding of, the process.
- There may be perceptions that a community or group has been misled or coerced into signing a deal, or that a 'backroom deal' has been brokered with one or more parties to the detriment of others.
- Overly legal and formal agreements can lead to companies adopting a minimalist compliance approach.
- Without carefully defined roles and objectives, a CDA may be perceived as substituting the role of government and creating dependency on the project.
- Formal agreements can potentially affect a community's ability to oppose the issuing of government permits and licences for the project and pursuing legal avenues that would normally be available.⁵

The business case discussion should weigh the potential benefits and risks associated with agreements from both the company and community's perspectives. This is the case for both onshore and offshore oil and gas projects. See Box 3 for an offshore perspective.

Box 3 Considerations for offshore oil and gas projects

CDAs are relevant to offshore oil and gas projects as well as onshore operations. As with onshore projects, offshore project proponents need to consider the broader operating environment, which includes the impact of land and sea access on surrounding communities. Socio-economic impacts on the marine environment can occur during exploration, through seismic surveys, and can continue throughout production. Offshore activities are supported by onshore facilities, such as logistics and supply bases, helipads and airstrips, which are usually located on adjacent coastal areas.

Security at offshore projects and their onshore support facilities is relevant to engagement with affected communities. Offshore production and floating storage facilities occupy marine areas and can exclude other uses. Possibilities for conflict over access pose potential safety, security and reputational risks for project proponents. These risks are particularly evident in cases where activities overlap with traditional fishing operations. Floating production, storage and offloading vessels and offshore drilling rigs typically attract fish, which can, in turn, draw the attention of local fishermen. Consequent risks to operations include potential collision with fishing boats, and fishing gear interfering with production facilities. Impacts on communities can include adverse changes to fishing communities' livelihoods, loss of income, dwindling fish stocks and reduced fishing area. Disputes over access to offshore areas can lead to community unrest.

Jurisdiction of offshore areas adds complexity. Offshore marine areas are often regulated by national government through maritime authorities and fisheries agencies, along with the navy, marine police or coastguard. Formulating a CDA in this context allows for local concerns to be addressed. A CDA process can help to establish and maintain a formalized communication channel with fishing communities regarding safe access to fishing zones and the impact of offshore oil and gas activities on their livelihoods. A CDA can formalize an agreement between fishing communities and project proponents on the most pressing issues. Potential community benefits that may be negotiated include support for alternative livelihoods, employment and education opportunities for coastal communities, and assistance to local businesses.

⁵ Adapted from Bocoum, B. *et al.* (2012a).

Community development agreement tool— an overview

This section provides an overview of the CDA tool. It presents the rationale, objectives and mechanisms of each of the five critical elements that form the foundation of the tool, and summarizes the key factors for achieving successful agreements between companies and communities.

Community development agreement tool—an overview

This section provides a brief overview of the CDA tool. The tool aims to facilitate a systematic approach that directs practitioners to achieve a set of critical preconditions at different stages of a CDA process.

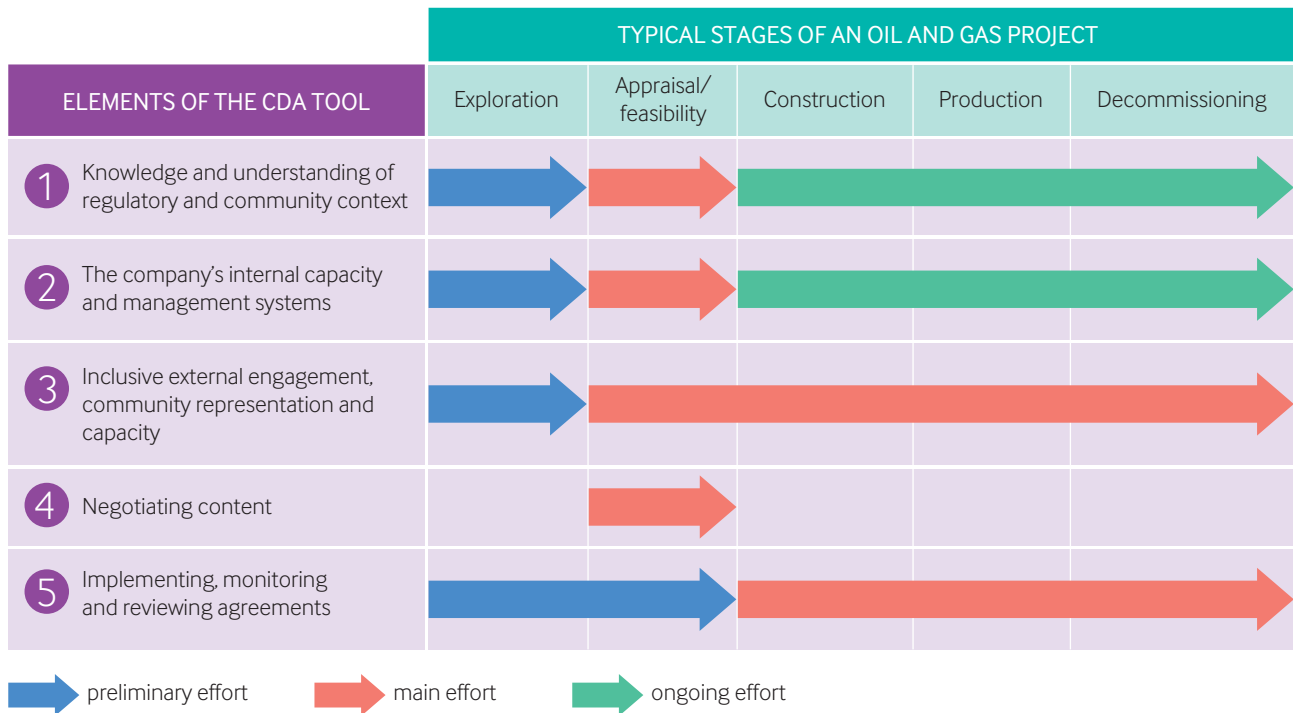
Importantly, the word 'stages' is used to denote an approximate sequence of events. CDAs may be used in a broad range of situations, for many types of projects, and in dynamic commercial, social and political contexts. In some contexts a CDA may be developed at the outset of the project (e.g. new projects), and in other contexts a CDA may be developed during operations (e.g. as companies align existing operations with specific corporate social responsibility standards). It is paramount that development of a CDA is adaptive and responsive to the project context. The CDA tool is not intended to be a prescriptive, step-by-step approach.

FIVE ELEMENTS OF THE COMMUNITY DEVELOPMENT AGREEMENT TOOL

Five critical elements form the foundation of the CDA tool. Each element plays a key role in ensuring effective agreement-making and implementation processes.

Figure 2 introduces the five elements of the CDA tool, and indicates the degree of effort that will likely be required for each element during the different stages of a typical petroleum project. While the CDA tool should not be interpreted as a prescriptive approach, a degree of sequencing is involved. The figure represents this sequencing by highlighting the project stages in which the preliminary, main and ongoing effort of each element is expected (recognizing that certain activities will increase or decrease during the different stages).

Figure 2 The five elements of the CDA tool, and the effort required for each tool during the typical stages of an oil and gas project



Section 3

Community development agreement tool—an overview

Preliminary efforts may involve the use of agreements or instruments such as memorandums of understanding, exploration access agreements or information-sharing agreements. These mechanisms may be appropriate early in the project life cycle, as they can help to establish protocols for preliminary engagement, and contain commitments to negotiate further agreements should the project proceed beyond exploration and appraisal.

Table 4 provides a summary of the rationale, objectives and mechanisms of each of the five elements of the CDA tool. This table can be considered a synthesized version of the CDA tool. A more detailed discussion on each element is provided in Section 4.

Table 4 The rationale, objectives and mechanisms of each of the five elements of the CDA tool

RATIONALE	OBJECTIVES	MECHANISMS OR PROCESSES
ELEMENT 1: Knowledge and understanding of the regulatory and community context		
<p>To ensure that the company has a detailed understanding of the legal, social and cultural environment it is operating in, and that this understanding is well-documented and informs decision-making across the business.</p>	<ul style="list-style-type: none"> ● Knowledge of the legislative regimes and the rights and interests of communities affected by the project. ● Understanding the communities' historical, cultural and socio-economic settings. ● Appreciation of the broad aspirations, issues and priorities of communities. ● Establishing a community socio-economic baseline that includes marginalized, minority or vulnerable groups. ● Environmental and social impacts identified and considered (direct, indirect, positive and negative). 	<ul style="list-style-type: none"> ● Legal advice, government guidelines, legislative review. ● Anthropological/ethnographic surveys. ● Stakeholder mapping, preliminary consultation, available reports. ● Socio-economic baseline studies, ethnographic studies, gender assessments. ● Environmental and social impact assessments. ● Human rights impact assessments.
ELEMENT 2: The company's internal capacity and management systems		
<p>To address the inherent asymmetry in the company-community interface, and ensure that the company is equipped and resourced to engage effectively.</p>	<ul style="list-style-type: none"> ● Corporate 'buy-in' with executive leadership, and support of community agreement-making. ● Broad inter-departmental commitment to agreement processes at the project level. ● Internal coordination with clear allocation of roles, responsibilities and budgets. ● Internal capacity and ability to understand community perspectives and aspirations. ● Adherence to ethical principles and standards of behaviour by company personnel. 	<ul style="list-style-type: none"> ● Alignment of company policies, standards and procedures to support CDAs. ● Management system that tracks community engagement, commitments and grievances. ● Internal cross-cultural training, and training in social performance. ● Other relevant capacity building training.

continued ...

Section 3

Community development agreement tool—an overview

Table 4 The rationale, objectives and mechanisms of each of the five elements of the CDA tool (continued)

RATIONALE	OBJECTIVES	MECHANISMS OR PROCESSES
ELEMENT 3: Inclusive external engagement, community representation and capacity		
<p>To ensure that the company's community engagement is transparent, and that the community is fully informed and able to effectively represent its views (including the views of vulnerable or disadvantaged groups).</p>	<ul style="list-style-type: none"> ● A structured engagement process, with clearly identified objectives for engagement, using forums tailored to local context. ● Effective communication and sharing of information in a way that is readily understood by the community. ● The community has sufficient capacity to organize and actively participate in consultation meetings. ● Inclusive engagement that takes into account various community views and perspectives. ● Vulnerable (including indigenous) groups have legitimate and competent representation, and are enabled and supported to engage on an equal footing. 	<ul style="list-style-type: none"> ● Communication protocols for engagement, including modes for organizing and documenting meetings and logging decisions and outcomes. ● Resources to address inequality between the parties in terms of technical and legal understanding. ● Provide accurate, up-to-date, easily understood information about the company's project plans and developments. ● Articulate the company's intent towards the community and managing impacts. ● Provide feedback on what the company has understood from its engagement.
ELEMENT 4: Negotiating content		
<p>An agreement that creates a stable environment, free of conflict, by delivering certainty to the parties in terms of security of the company's project investment, as well as certainty in relation to benefits to the community and mitigating impacts.</p>	<ul style="list-style-type: none"> ● Clear goals and precision over intended outcomes of agreements aligned with the priorities of local communities. ● Agreement terms and conditions that are negotiated freely and reflect the parties' interests and priorities. ● Provisions in the agreement suited to the context, generally covering community support of the project in exchange for benefits and the protection of community interests. ● Agreement governance structures that enable good communication and cooperation, avoid conflict and facilitate resolution of disputes. ● Provisions for implementation of the agreement, including principles and processes for planning and implementing programmes. ● Provisions for review of the agreement against intended outcomes. 	<ul style="list-style-type: none"> ● Understanding 'good faith' negotiations as being open-minded, solution-orientated, transparent and timely, and providing equal access to project information. ● Design and incorporate measures to manage project social and environmental impacts and opportunities identified in the knowledge-gathering stage. ● Focus on avoiding and mitigating negative impacts, and on sharing benefits and promoting long-term benefits beyond the life of the project. ● Design processes that respond to immediate priorities and long-term community aspirations.

continued ...

Section 3

Community development agreement tool—an overview

Table 4 The rationale, objectives and mechanisms of each of the five elements of the CDA tool (continued)

RATIONALE	OBJECTIVES	MECHANISMS OR PROCESSES
ELEMENT 5: Implementing, monitoring and reviewing agreements		
<p>To ensure the systematic and strategic implementation of CDA provisions, based on an 'implement, monitor, review and adjust' cycle.</p>	<ul style="list-style-type: none"> ● Governance and administrative structures to support implementation. ● Effective implementation strategies and plans to give effect to the agreement. ● Systematic monitoring that captures data about inputs, outputs, activities and progress. ● Performance measures relating to the success of the agreements relative to the stated objectives. ● Evaluation of agreement outcomes, including independent third-party assessment as appropriate. ● Local community participation and representation in review. ● Avoidance of dependency and addressing implications of project closure. 	<ul style="list-style-type: none"> ● Management system to set goals, and assign personnel roles, responsibilities and resources. ● Ongoing monitoring and reporting on activities undertaken. ● Strategic collaboration with partners for delivery of key programmes and managing financial benefits. ● Publicly available reports on implementation of programmes. ● Establishing an assessment framework for review of the CDA and its components. ● Building capacity for community participation in monitoring and review.

KEY FACTORS FOR SUCCESS

Key factors for ensuring successful agreements between companies and communities are described below:

- **Long-term value of CDAs:** successful CDAs address the community's long-term development goals beyond the life of the project. When these concerns are addressed CDAs can build and sustain positive, mutually beneficial relationships and partnerships between communities and companies.
- **Allow enough time:** successful CDAs are founded on relationships of trust. Building trust cannot be rushed. The process of creating a robust CDA (or set of CDAs) often takes longer than anticipated. Not allowing enough time to build trust during agreement-making risks project delays, and reputational damage where agreement failures are attributed to the company.
- **Inclusive process:** leading practice requires the agreement process to be inclusive, and seen as fair and equitable by members and representatives of the communities.
- **Commitment to the agreement:** for a CDA to work, there needs to be a clear commitment between parties to upholding its terms. The parties should understand and accept their obligations, recognize their value, and act in ways that reinforce and affirm, rather than undermine, CDA outcomes.
- **Clear commitments and procedures:** sufficient detail is needed regarding obligations, commitments and implementation responsibilities and procedures. These need to be clearly identified and expressed. Poor implementation is often the result of insufficient thought and attention given to provisions during the agreement-making process.
- **Adequately resourced:** the CDA should provide for effective governance arrangements for managing the relationship between the parties on an ongoing basis. Adequate resources need to be allocated to support implementation.
- **Ongoing monitoring and evaluation:** periodic review of the agreement is recommended to ensure that effective implementation and progress is made towards long-term objectives.
- **Responsiveness to circumstances:** the agreement should be sufficiently flexible to enable adjustments when circumstances change and/or when it becomes apparent that the desired outcomes are not being achieved.

Community development agreement tool—the five elements in detail

This section provides a detailed discussion of each of the five elements of the CDA tool.



Community development agreement tool—the five elements in detail

ELEMENT 1: KNOWLEDGE AND UNDERSTANDING OF THE REGULATORY AND COMMUNITY CONTEXT

In developing a CDA, the company will need to gain a detailed understanding of the legal, social and cultural environment in which it operates. It is essential that this understanding is well documented and informs decision-making across the business, particularly in terms of:

- whether to pursue a formal CDA and with whom;
- the key content areas to focus on to create mutual value; and
- how to work with affected groups and other stakeholders.

At a minimum, companies should build an understanding of:

- agreement-related laws and regulations (local, national and international);
- the historical, cultural and socio-economic setting of affected groups;
- physical context, including ecosystems services and land tenure arrangements; and
- the rights, interests, expectations, aspirations and priorities of affected groups.

Building a knowledge base

The first step in the agreement process is to build a foundational knowledge of affected communities. Developing a knowledge base that is fit for purpose should start early in the project life cycle. The knowledge base should be up to date. It should include information about the social, cultural, demographic, legal, environmental and economic context of affected communities, and the interactions that shape life in those communities. It can include information about land management, livelihoods and employment, income levels, health and education standards, gender dynamics and household living conditions.

Affected communities are not limited to those who live near a project, but extend to those who have economic, historical, cultural and social ties to the land on which a project is undertaken.

There is also a need to understand historical events that have shaped the community. This may include the community's colonial past, changing patterns of land use, land-use conflicts, and any prior interaction with extractive resource companies or other industrial developments.

Information can be drawn from a range of secondary sources, such as existing reports, historical accounts, books and websites. This usually entails desktop studies of publicly available material, including local government codes and plans, local government annual reports, land-use plans, environmental studies, maps, aerial photos, census statistics, health and education status indicators, media files and court reports. Communities and indigenous groups will often have their own strategic plans, and these will need to be considered. Information should be collected at local and regional levels to ensure that the broader context is considered in the agreement process.

Specific studies should be commissioned to help fill the knowledge gaps and create a fit-for-purpose knowledge base (see Box 4 on page 25). Baseline community assessment, socio-economic assessment, social impact assessment and social risk assessment can assist in building knowledge for an agreement process. These studies can be used to determine:

- which people, groups or organizations are appropriate for representing the community;
- where the authority to negotiate an agreement lies; and
- who else should be included in the ongoing community engagement.

Section 4

Community development agreement tool—the five elements in detail

Box 4 Examples of specific studies that can help to build the socio-economic knowledge base

- Social impact assessment
- Stakeholder mapping
- Network analysis
- Demographic and in-migration studies
- Cultural heritage assessments
- Archaeological surveys
- Ethnographic studies
- Livelihood and household surveys
- Social infrastructure surveys
- Social well-being indicators
- Community health surveys
- Labour market studies
- Assessment of local businesses and potential suppliers
- Surveys of local vegetation and wildlife use
- Agricultural and water-use studies
- Gender analysis
- Human rights impact assessments
- Land tenure and social mapping studies

Stakeholder mapping that identifies people or groups with interests in the project area is particularly valuable.⁶ For identifying representatives, a process of verification or 'ground-truthing' is recommended to ensure that representative structures faithfully reflect the views of constituents and can be relied upon to communicate accurately.⁷

The knowledge gained through early studies serves as the basis from which to identify the appropriate groups to engage with, who in the community has the authority to negotiate, and who else should be included in the process. The knowledge gained also provides the foundation for understanding community aspirations on such matters as compensation, impact management, the type and distribution of benefits, and expectations on closure conditions and post-closure land uses. External expertise can be important in documenting local knowledge and perspectives.

Leading practice in building knowledge involves engaging community members as part of the process. Meaningful involvement of communities in the design and conduct of studies—such as social and economic impact assessments and ethnographic studies—can help to create benefit for the communities and improve the quality of the outcomes.

Agreement processes work best when knowledge and information flow both ways. Not everyone will be familiar with the oil and gas industry and how it operates. Companies should consider what information about the company, project or operation needs to be shared with the various stakeholders. Providing information to community representatives helps to demonstrate good faith, and is less likely to lead to misinformation that could damage relationships between the community and the company.

Recognizing and respecting local cultural practices

Understanding the culture and customs of communities is critical. It is particularly important to understand the connections that communities have with their lands, and the cultural value placed on those lands. Land-connected people are most impacted when a company acquires land to develop a natural resource. Conflict can arise (and has arisen in the past) when companies lack an understanding of a community's ideas about the land, its value, cultural significance and uses.

⁶ The ICMM's 'Relationships tool 1: Stakeholder Identification' gives step-by-step guidance—see ICMM (2012).

⁷ See also IFC (2007).

Section 4

Community development agreement tool—the five elements in detail

Conflict can arise (and has arisen in the past) when companies lack an understanding of a community's ideas about the land, its value, cultural significance and uses.

Understanding a community's attachment to, and reliance on, its land requires close engagement and local expertise. Cultural advisers can build capacity in local social and cultural awareness. Building capacity early in the agreement process can provide practitioners with an awareness of laws, customs and social norms of the host communities, including different gender perspectives.

Understanding the legal context

It is necessary to understand the legal context for agreements, as well as the socio-economic, historical and cultural foundations for the legal context. In some jurisdictions, governments require project developers to enter into agreements with affected communities and/or to deliver benefits to local communities. These requirements can be loosely expressed as obligations to provide benefits, or tangible obligations to establish community development plans, community development funds and CDAs. For example, in Papua New Guinea, companies are required to establish and register compensation agreements with customary landowners before they can access land. In Australia, legislation requires negotiation of conditions of access and operation with indigenous native title holders and registered claimants.

In regulated contexts, legal advice will be required to understand and map legal and procedural requirements that apply to agreement-making. Sound legal knowledge ensures adherence to local, regional and national laws. Exercising due diligence is necessary for understanding specific rights and responsibilities that apply in any country context. Furthermore, due diligence needs to be applied in relation to the status of land and associated rights and land use limitations. Practitioners should also be aware of any relevant agreements that affected communities have with other companies, governments or organizations.

Within the oil and gas sector, community agreements are not always required by law (see Section 2, *The business case for community development agreements*). In the absence of legal requirements, companies and communities can voluntarily negotiate agreements. The delivery of benefits to local communities does not necessarily require a formal agreement, and such an agreement may be counterproductive. Companies should draw on their knowledge base to decide whether or not to seek a formal agreement.

CHECKLIST FOR ELEMENT 1: Knowledge and understanding of the regulatory and community context

- Is there an awareness of relevant regulatory and legislative obligations, including cultural heritage?
- Has an understanding of the cultural, social and economic context and interests of affected groups been developed?
- Are there any existing agreements between the affected groups and other companies or organizations?
- Have affected groups had any negative experiences with extractive companies in the past, and does the business understand this legacy?
- Has an assessment of traditional and customary land ownership been conducted? Has there been an assessment of lands owned, leased and/or managed by the company?
- Did the socio-economic knowledge base studies engage with a diverse range of people?
- Did the knowledge base studies include historical, livelihood, cultural, spiritual and heritage values?
- Is there an understanding of local aspirations from the community about closure conditions and post-closure land use?
- Did the environment and social impact assessment consider potential direct and indirect, and positive and negative effects of the project or operation?

ELEMENT 2: THE COMPANY'S INTERNAL CAPACITY AND MANAGEMENT SYSTEMS

Agreement processes require companies to be adequately equipped and well resourced. Competent staff, organizational capability and commitment from senior leaders is critical to success. At a minimum, oil and gas companies should:

- secure corporate 'buy-in' with executive leadership, and support for community agreements;
- establish broad interdepartmental commitment to agreement processes at the project level;
- coordinate internally, with clear allocation of roles, responsibilities and budgets;
- build internal competence and capability to understand different aspects of the project, and community perspectives, impacts and aspirations;
- adhere to ethical principles and standards of behaviour; and
- establish organizational systems and processes to ensure that commitments are honoured.

Building internal capacity can be a time- and labour-intensive process. Companies are strongly encouraged to allow sufficient time to build internal capacity. Otherwise, the CDA may fail to deliver due to lack of support from the company.

Organizational capability

Companies do not always have personnel with the skills, resources and experience needed to lead an effective agreement-making process. Where companies lack competent staff and organizational capability, agreement processes and outcomes will be negatively impacted. For example, staff may make comments or behave in ways that trigger negative reactions among community groups. Ill feelings can be amplified if companies approach agreement processes as a transaction or as a commercial negotiation.

Where internal competence or capability is lacking, companies should delay negotiations until strategies are in place to address significant gaps. Companies can build their internal capacity by:

- ensuring that company representatives understand the local cultural and socio-political context, and are trained in culturally appropriate negotiation techniques and relationship building;
- utilizing knowledgeable and experienced external advisers (although companies need to be careful not to 'contract out' their responsibilities);
- connecting with other companies with projects in the area to learn from their experiences; and
- building management systems and processes to ensure that everyone within the organization is 'on the same page' and that company commitments are recorded and acted upon.⁸

Where internal competence or capability is lacking, companies should delay negotiations until strategies are in place to address significant gaps.

Securing corporate 'buy-in'

Lack of company support and internal buy-in is one of the most significant recurring challenges in agreement-making and implementation. An important body of work is required to secure internal alignment and support for community agreement-making: the business case should be clear, and internal tensions and disagreements should be resolved prior to engaging with communities. Senior leaders at each project or operation should take ownership of all aspects of the agreement process. Senior managers should highlight the strong connection between a CDA and core business functions. This includes understanding the costs of delays to approvals or production because of disagreements with the community.

Company policies, standards and procedures that relate to agreements should also align with relevant international standards and guidelines.

⁸ Bocoum, B. *et al.* (2012b).

Section 4

Community development agreement tool—the five elements in detail

Lack of company support and internal buy-in is one of the most significant recurring challenges in agreement-making and implementation.

Agreement implementation often fails because parties do not take responsibility for their obligations under the agreement.

Internal engagement capacity

Internal engagement should take place as early in the agreement process as possible. Support and sign-off from senior leadership is needed to secure resources for agreement processes. Effective internal engagement helps to build a good agreement strategy, a negotiation plan, and a commitment towards a final agreement and implementation plans.

Successful agreements mobilize the entire site in their implementation. Agreements can also help to break down functional silos. There is a tendency for senior managers and other employees to regard responsibility for this work as sitting solely with the community relations and/or social performance department, rather than being a whole-of-business undertaking. All functional managers at the relevant site need to be included so that they accept responsibility for implementing relevant provisions and ensure that those reporting directly to them understand their specific responsibilities. The involvement of functional managers in agreement-making can be beneficial, as they can help the team to gain a better understanding of the obligations they can realistically be committed to. In turn, this can build early ownership and increase the likelihood of successful implementation.

Relevant departments and employees should be kept aware of the issues under discussion, and of the company's position. Strong internal relationships and regular engagement will keep all parts of the business informed and help to ensure common messaging. In this way, internal and external engagement processes complement each other.

The oil and gas industry characteristically has a high turnover of personnel, so it is important that agreement processes and commitments are well documented. It is essential that senior management understand the importance of continuity in agreement processes and retain the institutional knowledge base. Given that company personnel typically turn over in their roles every few years, arrangements should be in place for safeguarding knowledge and succession planning.

Internal reporting and communication

Corporate and operational communication about agreements should be wide-ranging and engaging, not limited to monitoring and auditing processes. Internal communication should cover matters such as broad intent, functional accountabilities for implementation, and progress milestones.

Information about agreement intent, roles and responsibilities should be regularly updated to ensure that all personnel (particularly senior leaders) understand their roles and responsibilities in agreement processes. This will help to generate a whole-of-business commitment, provide support, and help to secure resources for staff who are more directly involved in agreement processes.

Sharing information, experiences and lessons learned across the company should be encouraged. Sharing experiences with colleagues in other jurisdictions (e.g. through site visits or peer exchanges) can expand the company's expertise.

CHECKLIST FOR ELEMENT 2: The company's internal capacity and management systems
<ul style="list-style-type: none"> ● Does the company have previous experience of negotiating and implementing agreements?
<ul style="list-style-type: none"> ● Are company personnel and representatives trained in culturally appropriate negotiation techniques and relationship building?
<ul style="list-style-type: none"> ● Does the company have an adequate understanding of the local communities and the region where the project is located?
<ul style="list-style-type: none"> ● Does the company recognize its obligations to act responsibly and contribute to positive development outcomes, or does it see its role in relatively narrow commercial terms?
<ul style="list-style-type: none"> ● Does the company have the skills, programmes, policies or procedures in place to engage in agreement-making and implementation?
<ul style="list-style-type: none"> ● Are training or courses required internally to build capacity, or to enable the company to orient staff to the local context?
<ul style="list-style-type: none"> ● Does the company have effective management systems in place for maintaining continuity and for following through on commitments and undertakings?
<ul style="list-style-type: none"> ● Are internal communication arrangements and content consistent?
<ul style="list-style-type: none"> ● Are there senior decision-makers responsible for implementation, or at least for oversight of implementation?
<ul style="list-style-type: none"> ● Are lines of responsibility clear within many operational units of the company, or are they likely to be passed off to a human resources or community relations department?

ELEMENT 3: INCLUSIVE EXTERNAL ENGAGEMENT, COMMUNITY REPRESENTATION AND CAPACITY

Effective agreement-making relies on the quality of community engagement by the company. As a general principle, engagement starts early in a project's life cycle and continues until decommissioning.

Regular and inclusive engagement ensures that the business and affected communities are informed throughout the life of the agreement. Regular community engagement can help to avoid misunderstanding and conflict, and ensure that commitments are met.

Inclusive engagement with communities can help a company to:

- build community trust;
- respond to changing circumstances and community concerns;
- obtain community support; and
- manage community expectations throughout the project life cycle.

At a minimum, oil and gas companies should:

- implement a structured engagement process, with clearly identified objectives for engagement, using forums tailored to the local context;
- establish legitimate and competent representation for vulnerable or disadvantaged groups, which enables them to engage on an equal footing;
- secure sufficient resources and capacity to enable the community to organize and participate actively in consultation meetings;
- ensure that community engagement is transparent, and that the community is informed and able to effectively represent its views;
- ensure that communities, or their representatives, have access to adequate legal support throughout the agreement negotiation process;
- take into account diverse community views and perspectives; and
- engage internally with all functions to ensure broad commitment to the agreement.

Section 4

Community development agreement tool—the five elements in detail

Principles of inclusive engagement

Where agreements are required or sought, inclusive engagement is essential for timely negotiation and settlement. Engagement should be aimed at communicating project details and requirements, and at seeking to understand community concerns and aspirations.

Inclusive engagement requires active consideration of the other parties' perspectives. The company should therefore actively seek to understand the interests of individuals, organizations and groups affected by the company's activities and proposed actions, and should respond promptly and meaningfully to concerns raised. Engaging inclusively requires working from a verifiable knowledge base (see Element 1, pages 24–26) and engaging with affected parties to understand community aspirations and priorities.

Considering views from different groups within a community allows for a greater variety of opinions to inform agreement processes, and increases opportunities to reach a mutually beneficial agreement. Attaining a diversity of views means engaging with people who might be vulnerable, disadvantaged or marginalized in decision-making processes (see Box 5). Tailoring engagement processes for different groups can reduce the risk of reinforcing existing barriers to participation or creating new ones.

Engaging throughout the project life cycle

Companies should start community engagement as early as possible, even before having a visible presence on the ground. Visibility can raise community expectations for short-term benefits that may go unfulfilled if a project does not proceed beyond exploration. Engaging and agreeing on engagement principles and processes at an early stage can help to manage expectations and build trust between the parties. Taking time early in the project life cycle to jointly develop an engagement process reduces the risk of delays in reaching agreement. It also fosters a sense that the process—and the agreement—are joint efforts.

Box 5 Considerations for engaging with vulnerable groups

Indigenous Peoples

Indigenous Peoples—social groups with identities that are distinct from dominant groups in national societies—can be subject to different types of risks and impacts. These impacts can include loss of identity, culture, traditional lands and natural resource-based livelihoods. Companies should engage with Indigenous Peoples in fair, timely and culturally appropriate ways throughout the project life cycle. Early engagement is an essential step in building longer-term processes of consultation, informed participation and good faith negotiation. Engagement should be based on the open provision of information, in a form that is accessible to Indigenous Peoples. This may mean issuing communications in indigenous languages, and respecting cultural modes of communication (e.g. some cultures may require oral communications, undertaken in person and on customary lands). As a principle, engagement should be undertaken through traditional authorities and with respect for traditional decision-making structures and processes.

Women and other groups

Companies should commit to engagement with potentially vulnerable or disadvantaged groups throughout the project life cycle. These groups are often the least engaged. Although vulnerability has many dimensions, potentially vulnerable people may include women, youth, cultural minorities, elders and people with disabilities.

Ensuring inclusion of these groups can involve, for example, holding multiple and diverse forums, using participatory approaches, and making information available through diverse media and in multiple languages. Meetings can take many forms so it is best to remain open to advice about what is appropriate to the context. In some cases, it may be necessary to engage certain groups independently. In some countries, women may be discouraged from being vocal participants in mixed gender meetings, so women-only consultations may be required for their meaningful participation in some situations.

Section 4

Community development agreement tool—the five elements in detail

One of the most common mistakes in developing agreements occurs when parties rush to negotiate content, overlooking processes for strengthening relationships. Processes for negotiating and implementing an agreement should support meaningful community participation.

It is important for companies to continue to engage inclusively once an agreement is made, in order to support agreement implementation.

Enabling informed engagement

There is often a marked disparity in the human, financial and information resources at the disposal of different groups. In particular, the company may possess greater resources and bargaining power vis-à-vis community groups.

Agreement-making should seek to balance power, information and resources between the company and communities. To enable informed participation, communities should be provided with the resources they need to participate. It is in the best interest of the business to ensure that the community enters into agreement-making in a state of readiness. Communities that are under-resourced may be ill-prepared to engage among themselves, or with the company, government and other stakeholders.

Companies should clarify what information can, and will, be shared with communities, and how this is to be done. A transparent, two-way flow of information should be established from the outset.

Failure to disclose information that is key to the agreement process can cause major tensions. By contrast, sharing knowledge and information with communities in good faith can build understanding and trust, which will assist in the conduct of negotiations and subsequent implementation.

Representation and inclusion

It is critically important to identify who should participate in the agreement process and how they should be represented. Identifying the parties requires an understanding of the local community and context. This is often difficult and requires specialized knowledge (see Element 1, pages 24–26).

It is important that agreements prioritize the interests of those whose livelihoods, assets, culture or well-being is connected to the area that will be impacted. No matter how generous the terms of an agreement may appear, they are unlikely to be acceptable if all of the affected communities are not engaged in the agreement-making processes.

For practical reasons, agreement processes cannot involve every community member acting as an independent agent and participating in all agreement processes. In most instances, parties need to engage through representatives. A principal company negotiator usually manages internal processes to reach an agreed company position on issues relating to the agreement process. Likewise, other parties to the process should be enabled to select people to represent their interests.

Determining the organizations that best represent the community parties may take time and require new links between diverse community groups. Ideally, these organizations should be cohesive, and have a recognized structure and a purpose beyond the interests of individual members—i.e. they must be truly representative. Some organizations may be formed specifically for agreement purposes.

Where multiple groups are identified as parties to the agreement, a decision should be made about whether to adopt a multistakeholder approach and engage with all relevant parties, develop bilateral agreements with each separate community or stakeholder group, or have a composite approach using some multilateral and bilateral processes.

Multiple CDAs would generally be required where more than one community is affected (or more than one community interest is represented), and a multilateral agreement representing all communities and interests is impracticable.

CHECKLIST FOR ELEMENT 3: Inclusive external engagement, community representation and capacity
● Do engagement processes start early in the agreement process?
● Have all of the rights holders and affected groups been identified and engaged?
● Do engagement processes include all relevant (including vulnerable) groups and are they adequately represented?
● Have any barriers to the participation of all affected groups been removed?
● Are engagement processes tailored for different groups?
● Do engagement methods respect local customs?
● Is information being shared honestly, transparently and in a manner that is understood by the land-connected people?
● Does the engagement plan reflect good-faith principles?
● Has the engagement plan been integrated into operational plans?
● Are all communications, consultations, engagements and commitments being documented?
● Are engagement activities resourced?
● Have relevant managers and teams within the company been engaged in the agreement-making process?

ELEMENT 4: NEGOTIATING CONTENT

The content of a CDA can vary widely depending on the context of the agreement. The main objective is to reach an agreement through inclusive, equitable and good faith negotiations. This should deliver certainty to the parties, particularly in terms of:

- security of the company’s project investment;
- recognition of respective rights;
- mitigation of adverse impacts; and
- creating long-term benefits for the community.

Engaging in good faith negotiations with communities is critical to enable oil and gas companies to:

- understand and address communities’ immediate priorities and long-term aspirations;
- design and incorporate measures to manage project impacts and opportunities;
- promote long-term benefits to communities beyond the life of the project;
- maintain community support; and
- provide certainty to all parties during agreement implementation.

As a minimum, oil and gas companies should:

- secure sufficient resources and capacity for the community to negotiate on a level playing field (see Element 3, especially ‘*Enabling informed agreement*’ on page 31);
- negotiate in an open-minded, solution-orientated and transparent way;
- establish clear goals for agreements, based on inclusive community engagement;
- ensure that agreement terms and conditions are negotiated freely and reflect parties’ rights, interests and priorities;
- negotiate an agreement suited to the context, generally covering protection of community interests and other benefits;
- provide for implementation of the agreement, such as the principles and processes for planning and delivering programmes, and for evaluation of the agreement against intended outcomes; and
- establish agreement governance structures that enable effective communication, cooperation and resolution of disputes, and avoid violent conflict.

Preparing for negotiation

The pre-negotiation stage involves the company and the community (or communities) laying the groundwork for negotiations. Box 6 lists several attributes of positive negotiations. A CDA is only likely to be successful in the long-term if these attributes are present during negotiation.

Prior to negotiating with communities, companies should ensure that all parties have a thorough understanding of each other's objectives and needs, and the potential impacts of the project. Drawing on the knowledge base (see Element 1, pages 24–26), companies should clearly communicate their objectives and plans to ensure that the agreement is realistic and achievable (see Element 3, pages 29–31). These objectives and plans should be revisited during the negotiation process and periodically after agreement is made.

Prior to entering into formal negotiations, companies will need to resolve internal tensions and disagreements (see Element 2, pages 27–29). Relevant departments and employees should be kept aware of the issues under discussion, and of the company's position. Companies should also establish who has the authority to negotiate on behalf of the company and who else should be included in the process (see Element 3, pages 29–31).

Box 6 Attributes of positive negotiations

Companies should conduct negotiations that are:

- interest-based rather than positional;
- grounded in inclusivity of the process;
- legitimate and trusted;
- transparent between the parties;
- focused on the stability and sustainability of outcomes;
- context specific;
- predictable in terms of the process; and
- fair and equitable for participants.

Negotiations should be conducted in a way that leaves no party feeling disadvantaged. Companies should assess community capacity to negotiate as early as possible. Where capacity gaps are present, sufficient time and resources should be allocated to developing the requisite skills, training and organizational capabilities to participate meaningfully in negotiations. Capacity training will assist in building community agency and ownership of the process.

Taking the time to build relationships before embarking on formal negotiations, and to jointly develop a negotiation process, can reduce delays in reaching agreement on content. An effective negotiation process is likely to result in an agreement that reflects a clear, mutually understood set of interests. While the content will vary according to the context, the agreement process should be designed and agreed as part of agreement preparation.

The pre-negotiation stage may include precursor agreements such as a memorandum of understanding or a negotiating framework, which set out rules to govern the process for negotiating the main agreement. In most cases, this will mean starting engagement activities during the early stages of the project life cycle.

Taking the time to build relationships before embarking on formal negotiations, and to jointly develop a negotiation process, will reduce delays in reaching agreement on content. A pre-negotiation memorandum of understanding—i.e. a set of 'rules of engagement'—is useful for recording agreement about how negotiations will proceed.

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Conducting negotiations

Conducting negotiations in good faith is essential for good agreement-making. An abundance of literature is available on negotiation techniques. Box 7 summarizes the key principles of negotiation in the context of CDAs.

Company negotiators should ensure that the negotiation focuses on the need for balanced outcomes. When checking how to incorporate community aspirations, negotiators should ask, 'How can we?' rather than 'Can we?' This will help to maintain the spirit of interest-based, respectful and good faith negotiations.

Sometimes, a party may express a position that is non-negotiable. Declaring something to be non-negotiable can stall negotiations. Company negotiators should keep an open mind, and consider what interest underlies the non-negotiable term. Sometimes, a principle is expressed as being non-negotiable—for example, 'It is non-negotiable that we respect the environment'. This is a statement of principle that does not create specifically enforceable obligations. Asking 'How can we respect the environment?' could move the negotiation process forward, towards more operable commitments. Internal legal and financial experts should advise on, and support, the negotiation process. They need to be included early in the process so that they have sufficient background and context, and should be committed to the principled approach.

Agreement content

Poor implementation of agreements is often the result of insufficient thought and attention assigned to the content of the agreement during negotiations. There is no one-size-fits-all approach to specifying the terms that are included in a CDA. Agreement content varies considerably depending on the context, goals and aspirations of the parties, and their perception of what is fair and reasonable.

At a fundamental level, a CDA reflects the community's support for the company's project subject to certain conditions, and in return for a range of benefits and impact mitigation measures.

Benefits may include:

- preferential access to training and employment opportunities;
- local business support and contracting opportunities;
- capacity and skill development to enhance 'employability';
- education and youth development; and
- direct payments to the community and/or community investment programmes.

Poor implementation of agreements is often the result of insufficient thought and attention given to agreement content during negotiations.

Box 7 Principles of good-faith negotiations

Principles of good-faith negotiations proposed by the IFC and endorsed by the World Bank include:

- involvement of legitimate representatives;
- willing engagement, free from coercion or intimidation;
- joint exploration of key issues of importance;
- use of participatory approaches;
- accessibility in terms of timing and location;
- provision of sufficient time for decision-making;
- mutual respect and sensitivity to cultural and other differences;
- flexibility, consideration of multiple options and willingness to compromise;
- documented outcomes; and
- equal access to the best available information.

Source: Bocoum, B. et al. (2012a).

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Mitigation measures typically address impacts on cultural heritage, environmental impacts, access to water and other resources, as well as adverse social impacts.

Approaches to social investments vary considerably across companies and contexts.⁹ Box 8 provides key provisions that are usually included in CDAs.¹⁰

Establishing effective governance arrangements

The long-term success of an agreement depends on a good faith 'front-end' process. It also depends on the effective implementation of governance arrangements once the agreement is struck. Good governance helps to manage ongoing relationships between the parties, and monitor progress towards agreement objectives. Agreement governance should be considered in the negotiation phase, rather than after the agreement content has been established. Agreement governance arrangements should provide assurance to all parties that

agreement obligations will be upheld. They should also support transparency, accountability and achievement of objectives.

Governance structures typically include:

- liaison and/or management committees;
- financial management structures such as trusts and foundations;
- dispute resolution processes;
- internal and external communication processes; and
- monitoring and review processes.¹¹

Effective governance arrangements should help to ensure that parties comply with their obligations and commitments under the agreement, and that issues and concerns are recorded and addressed through agreed processes.

Box 8 Key provisions commonly included in a CDA

The key provisions that are usually included in a CDA are:

- clear goals and objectives of the agreement;
- who will manage the agreement and its implementation (e.g. the persons, board, committee, foundation, trust, forum or other entity);
- who will represent the community for the purposes of the agreement;
- how members of a community participate in decision-making and implementation;
- mechanisms for resolving community concerns or grievances relating to the agreement's implementation;
- how the interests of vulnerable groups (e.g. women, indigenous groups, marginalized peoples) will be represented in the decision-making and implementation processes;
- how the project will contribute to the community's socio-economic development and sustainability, and how will it assist in the development of self-sustaining, income-generating activities;
- how communities will be consulted on, and prepared for, the end of the project's life;
- monitoring plans and frameworks;
- incentives for achieving predefined outcomes, and potential penalties for slow or failing implementation; and
- funding requirements, as well as provisions for management, accountability, and transparency of funds.

In general, expressions that lack clarity (e.g. 'where feasible' and 'if possible') should be avoided. Instead, the circumstances that dictate 'feasibility' and 'possibility' should be set out.

Source: adapted from Bocoum, B. *et al.* (2012a), and Rio Tinto (2016).

⁹ IPIECA (2017).

¹⁰ Rio Tinto (2016) provides a list of 70 potential elements that can be included in agreements along with detailed description of each element.

¹¹ Bocoum, B. *et al.* (2012b).

CHECKLIST FOR ELEMENT 4: Negotiating content

- Do all parties have a thorough understanding of each other's rights, objectives, needs and the potential impacts of the project?
- Has the community's capacity to negotiate been assessed and strengthened?
- Are the negotiations conducted based on principles of good faith?
- Is the agreement language clear and precise? Could different interpretations be reached regarding what has been agreed?
- Are agreement goals and intended outcomes clear?
- Would people with no involvement in the negotiation be able to understand what was intended from the text of the agreement?
- Have the goals of the initiatives and activities in implementation plans been clearly defined?
- Are the initiatives and activities feasible and appropriate to the context?
- Are roles, responsibilities and expected behaviours of agreement parties clearly defined?
- Are governance arrangements culturally appropriate and do they consider local capacity?
- Are the implementation deeds/schedules included (e.g. costs and time frames)?
- Are there robust arrangements for a broad-based distribution of benefits?
- Are operational components of the agreement flexible enough to cater for unforeseen circumstances?
- Have enforceable mechanisms (with rewards and penalties) been incorporated into the agreement?
- Do those with the responsibility to implement have the legal, regulatory or policy mandate to carry out the actions they are responsible for?

ELEMENT 5: IMPLEMENTING, MONITORING AND REVIEWING AGREEMENTS

It is essential that companies build management structures that ensure systematic implementation of agreement provisions. Leading practice is based on an 'implement, monitor, review and adjust cycle', whereby the outcomes of implementation are measured, and corresponding adjustments are made to approaches and practices. This cycle is commonly referred to as 'adaptive management'.

Companies can facilitate the implementation of an agreement by ensuring that:

- agreement obligations are fully documented in an accessible form;
- an up-to-date register is maintained, indicating the action that has been taken, is under way, or is proposed to address specific agreement obligations;
- action plans are aligned with the agreement;
- a senior manager has overall responsibility for the ongoing management of the agreement;
- responsibility for implementing different components of the agreement is allocated at an early stage;
- implementation is collaborative, involving companies and communities working towards stated goals, for example through a liaison committee; and
- there is ongoing internal and independent monitoring of compliance against commitments.

At a minimum, oil and gas companies should:

- form governance and administrative structures to support implementation;
- adopt effective implementation strategies and plans to give effect to the agreement;
- set targets with quantifiable performance measures of inputs, outputs, outcomes and impacts;
- implement systematic monitoring that compares actual performance with the agreed measures;
- avoid dependency and address implications of project decommissioning;
- engage in a periodic review and evaluation of agreement performance (e.g. commissioning third-party or independent reviews);
- ensure affected community participation and representation in review processes; and
- follow through and address review findings.

Implementing agreements

The attention given to implementation is a major determinant of agreement outcomes. The extent to which companies meet agreement obligations and follow through on commitments will directly influence their relationships with the communities. Good implementation practice can assist in avoiding disruptions to the project.

Agreements do not always contain detailed provisions about implementation, monitoring and review. Planning for implementation will ultimately determine the success or failure of an agreement. Implementation should be addressed at the negotiation stage by setting up appropriate governance processes, and monitoring and reviewing requirements (see Element 4, pages 32–36).

Implementation is not simply about ensuring that there is compliance with the terms of the agreement. While compliance is important, the most effective agreement management processes are those that balance a focus on outcomes and process. This requires maintaining the overall intent of the agreement, and undertaking internal and external performance monitoring with regard to the aims of the agreement. It also requires being prepared to change practice, and even the agreement itself, where it is apparent that the desired outcomes are not being realized. This can only be achieved if there is a commitment by all parties to make the agreement work.

Implementation often fails because parties do not take responsibility for their obligations under the agreement. Companies should ensure that their representatives on liaison committees and other governance structures understand the responsibilities associated with the roles they occupy. To fulfil obligations, responsibilities need to be spelled out, and authority vested in each representative.

Another way to support implementation is a requirement for senior decision-makers to be involved in reviews and/or to attend a minimum number of implementation committee meetings each year. Some agreements even prohibit the delegation of key responsibilities to junior personnel.¹²

Monitoring and evaluating agreements

Monitoring and evaluation is required to measure the success of a CDA relative to its objectives (see Box 9). Monitoring is an ongoing, largely internal set of processes that focus on programme inputs, outputs, activities, performance and progress. It involves the routine, systematic collection and analysis of information related to the agreement initiatives, activities and associated outcomes.

Box 9 The differences between monitoring and evaluation

Monitoring

- Regular collection and analysis of data on inputs, outputs, activities; focus is on performance
- Mostly done internally
- Continuous
- Supports management

Evaluation

- Systematic and impartial assessment of accomplishments
- Often done externally
- Occasional
- Supports strategy

¹² Gibson, G. and O’Faircheallaigh, C. (2015).

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Monitoring and evaluation provides evidence to indicate implementation success or failure, and allows emerging issues to be tracked and addressed. Without reliable evidence of success or failure, it is difficult to manage the risk of perceived failures undermining the agreement and/or the company's reputation.

Systematic monitoring allows progress to be evaluated and improved with respect to the agreement's intent and agreed benchmarks. Evaluation considers the effectiveness of delivery with respect to the agreement's commitments and objectives for all parties. Reporting of evaluation outcomes should take place at regular intervals (e.g. annually) or at agreed milestones. Evaluation should focus on both specific outcomes and how parties are performing against governance commitments. Evaluation can lead to adjustment, corrective action and improvements in the way the agreement is delivered.

If monitoring and evaluation are not conducted, it becomes difficult to know the extent of implementation success or failure, or to develop strategies to deal with implementation challenges. Without clear evidence of success or failure, perceived failures of the company may undermine the agreement.

Leading practice agreements ensure that the community is involved in the process. Designing the monitoring and evaluation programme should be done in the negotiation phase, with the involvement of all parties. An inclusive approach will improve the likelihood of achieving project benefits. Participatory monitoring will also promote transparency and accountability, and help to ensure that the community has a degree of ownership and control over the project.

Box 10 presents some considerations on metrics that may be used in designing a monitoring and evaluation programme.

Box 10 Metrics to consider when designing a monitoring and evaluation programme

Qualitative or quantitative data?

Precise measures are valuable in monitoring, evaluating and reviewing agreements. Quantitative indicators provide specificity and can be helpful in determining performance. These can include frequency, quantity or magnitude of inputs, activities and experiences. Quantitative data do not help to understand the contextual, lived experiences that influence performance. Qualitative data can help to contextualize quantitative data; it consists of opinions, perceptions or judgements that indicate the subjective experience.

Input or impact?

Monitoring, evaluation and review should capture data on inputs and impact. Input and activity data can include 'dollars spent' or 'programmes initiated'. While such metrics may provide for a valuable way to measure the actual versus planned inputs and initiatives, they do not provide information on impact, or on whether the ultimate aim was met. Combining indicators of inputs and impacts is more informative than, for instance, tracking only the amount spent on training, or the numbers involved in specific courses.

Thinking beyond targets

Some indicators will be obvious and will be based on targets that are established in the agreement. It is equally important to look beyond obvious indicators. For example, just because a company achieves targets for levels of indigenous employment, this does not guarantee that Indigenous Peoples have worthwhile jobs.¹³ A review of the agreement provides an opportunity to step back from the more immediate delivery pressures, consider the 'big picture' of the agreement, and identify opportunities to revise the aims of the agreement.

¹³ Gibson and O'Faircheallaigh (2015).

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To ensure continuity, companies should assign responsibility for monitoring and evaluation to specific staff. Such staff can be tasked, for example, with compiling concise, monthly reports, and more rigorous quarterly/annual reports. Regular capturing of insights and lessons about what happened and why can lead to better agreement outcomes, especially where monitoring and evaluation are undertaken jointly by parties to the agreement.

Grievance mechanisms

While a CDA aims to avoid conflict, it remains important to have an effective grievance mechanism in place throughout the project cycle. Box 11 describes the characteristics of an effective grievance mechanism. It is essential that companies establish processes for dealing with complaints and grievances related to the agreement, and to the wider project. Maintaining a process that provides the community with an appropriate channel to resolve complaints can help in managing disagreements, strengthening relationships and instilling confidence that concerns will be addressed.¹⁴

Box 11 Grievance mechanisms

A project-level grievance mechanism is a locally based, formalized way for a company to accept, assess and resolve community complaints related to company activities. It offers a package of widely understood and effective procedures for solving problems that are culturally appropriate, in combination with specially trained personnel, and aims to help parties reach speedy, efficient and acceptable resolutions with dignity, justice and finality.¹⁵

All complaints, disputes and grievances should be recorded in a database. To maintain transparency and trust, complaints received should never be deleted or destroyed. The grievance mechanism forms part of the overall engagement strategy, and is a key foundation for effective agreement implementation.

Reviewing agreements

The review is a far more comprehensive process than monitoring and evaluation. Ideally, the review subjects the agreement and outcomes of the agreement to independent scrutiny. It involves the analysis of information to establish the effectiveness of implementation, and considers the appropriateness of the provisions and implementation initiatives. A review takes place at longer intervals (e.g. every five years) with the aim of assessing whether the agreement is achieving its core purpose, and identifying ways to improve outcomes. Adjustments to the agreement may be required to address persistent issues identified through monitoring and evaluation, and to adapt to new or emerging circumstances.

Reviews should always be approached with the purpose of improving outcomes, not just proving that commitments were delivered.

Reviews should always be approached with the purpose of improving outcomes, not just proving that commitments were delivered. Leading practice involves third parties and the participation of community groups throughout the review process. Community groups can support the review by providing feedback on behalf of parties to the agreement and other beneficiaries. This can provide stakeholders with an opportunity to amend and improve an agreement. Where adjustments are needed, parties will need to negotiate changes and agree to new provisions.

¹⁴ IFC (2009).

¹⁵ World Bank (2008).

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Well-structured agreements should be flexible and allow for continuous improvement without threatening fundamental commitments. Where a review finds flaws in the agreement, it may need to be amended to enable improvements. Opportunities identified as part of the review process should trigger changes to plans, operating practices and objectives. Box 12 lists common factors that influence the success of review processes.

Box 12 Factors that can influence the success of the review process

- **Adequate time and resources:** it is easy to underestimate the time and resources required to review an agreement.
- **Broad company support:** leaders should encourage support for the agreement and the reasons for reviewing it.
- **Quality information:** the review team will need to have access to quality data and information. Regular monitoring can support a review process.
- **Clear triggers and scope:** clear definitions of the triggers, scope and conduct of reviews is essential. Definitions should be canvassed with parties to the agreement during negotiations.
- **Specialist advice:** access to specialist advisers (e.g. legal counsel) will help to ensure that the review is feasible and practical.

Relinquishing agreements

A CDA may be relinquished or terminated where there is a change in project ownership, or when operations are suspended or terminated. The agreement itself should provide a process for what happens under such circumstances. An agreement should contain provisions which set out the transfer of liabilities and obligations to a new owner, include a requirement to provide notice of when a sale is planned, and specify whether community consent is required. Expert legal advice is critical for ensuring that the community continues to receive its entitlements under an agreement until the end of the project life cycle.

In general, the provisions of an agreement specify the conditions under which a project or agreement may be suspended or terminated, indicating periods of notice, effects on payments, the period of notice for re-commencement of operations, the process for project termination, and which clauses survive termination.¹⁶

CHECKLIST FOR ELEMENT 5: Implementation, monitoring, reporting, and review

- Are agreement commitments documented in a register or other accessible form?
- Does the monitoring framework include all actionable agreement provisions?
- Was the host community involved in the selection of performance indicators?
- Do indicators reflect both short-term expectations and long-term benefits?
- Are indicators being tracked regularly using accurate and reliable data?
- Is relevant data gender-disaggregated?
- Are host community or other organizations involved in evaluation and review?
- Are there plans for a formal periodic review of the agreement and its implementation?
- Are formal reviews by independent third parties being considered?
- Do implementation aspects of the agreement allow for flexibility and adjustment?
- Have changes and improvements occurred as a result of the evaluation and review?
- Is there a culturally appropriate process for community members to report concerns and complaints?

¹⁶ Gibson and O'Faircheallaigh (2015).

Appendix: Differences between the mining sector and the oil and gas sector

Appendix:

Differences between the mining sector and the oil and gas sector

Many existing resources cover multiple dimensions of agreement-making and community development. The majority focus on mining, or otherwise more broadly on the 'extractive industries'. While most of the principles and approaches may also be relevant for the oil and gas

industry, the guidance presented in this document recognizes that there are important differences between the mining and oil and gas sectors. These differences are summarized in Table A1.

Table A1 The differences between the mining and the oil and gas sectors, and the implications for CDAs

MINING	OIL AND GAS (onshore)	IMPLICATIONS FOR CDAs
STRUCTURE OF THE INDUSTRY		
The mining sector consists of many companies of varying sizes, extracting diverse commodities, often with small and large companies working alongside each other. Artisanal miners are prevalent in some countries.	The oil and gas sector features a spectrum of players, including international oil companies that have operations around the globe and may have fully integrated portfolios across the whole value chain (both upstream and downstream), national oil companies that are majority-owned by government and play a significant role in some countries, and many other smaller independent corporations that may operate in a specific region or country, or even internationally.	The multitude of potential corporate configurations for any given project make consistency in approaches to communities difficult to achieve as each actor will have its own priorities, varying capacity and resources available, as well different ways of assessing project risk.
COMMERCIAL ARRANGEMENTS BETWEEN COMPANIES		
Major corporations tend to take majority ownership stakes in locally incorporated companies. Joint ventures at the exploration phase give way to majority ownership by larger companies during the feasibility and development phases.	Joint ventures between companies are a common feature for collaboration and risk sharing. Benefits include sharing the sheer scale of investment, gaining access to proprietary technology, access to resources, and market positioning. Some jurisdictions require companies to contract to, or engage in joint ventures with, the national oil and gas corporations.	Joint ventures in the oil and gas sector may require early and ongoing coordination between partner companies regarding the approach to agreement-making.
STATE INVOLVEMENT AND INTEREST		
Heightened state involvement is not a significant feature in the mining sector (other than for uranium).	Energy supply is generally a national strategic concern. There is significant state interest in the development of petroleum production.	The significant involvement of state actors in the oil and gas sector can result in governments becoming part of the agreement-making processes.

continued ...

Table A1 The differences between the mining and the oil and gas sectors, and the implications for CDAs (continued)

MINING	OIL AND GAS (onshore)	IMPLICATIONS FOR CDAs
DIVERSITY OF OPERATIONS AND LEGAL FRAMEWORKS		
<p>Mining laws usually set out detailed specifications for procedures and institutional structure, roles and mandates, because these have to apply across a diverse sector.</p>	<p>Oil and gas laws and regulations are more likely to be regulated through agreements at the national level.</p>	<p>Greater homogeneity in the oil and gas sector may facilitate sharing of good practice approaches to agreement-making with communities across the sector.</p>
PROJECT TIME FRAMES		
<p>Mining life cycles typically rely on relatively short 'payback' periods. Long-life mines are usually achieved through accumulating technical knowledge and further discoveries that follow the commencement of operations.</p>	<p>Oil and gas projects typically have a long lifespan, and it can take as long as a decade to bring a discovery online. Production horizons are usually long-term (>20 years) and the capital cost is amortized over long periods.</p>	<p>The long-term life cycle for oil and gas creates opportunities for long-term investment in communities that represent a whole generation.</p>
WORKFORCE		
<p>Significant opportunities exist for involving unskilled labour from local communities.</p>	<p>While a large number of jobs can be created during the construction phase, workforce numbers during production are, typically, relatively low and largely involve specialized skills and trades.</p>	<p>Oil and gas companies may not generate a large number of permanent jobs, but can have a greater impact through efforts to secure local content in the supply chain, which can support agreement initiatives.</p>
IMPACT ON LANDSCAPES AND COMMUNITIES		
<p>Mines, especially open-cut operations, are characterized by significant disturbance and alteration to the landscape. Activities are concentrated around the mine site. Mining leases are for the exclusive use of the operation.</p>	<p>While subsurface reservoirs can spread over vast distances, drilling technology typically means that the oil and gas production footprint is limited, with a minimal amount of surface disturbance. Midstream transport of products, particularly continental pipelines, can be significant. Surface rights holders may use land in co-location with production.</p>	<p>Agreement-making in the oil and gas sector may require engagement with a greater number of community groups than in mining due to a larger operational footprint. Community groups could include seasonal pastoralists and herders, fishers and other groups with an interest in marine areas near offshore projects, and communities affected by pipelines.</p>
COMMUNITY DEVELOPMENT		
<p>The industry has a large body of experience and knowledge in dealing with affected communities. Mining companies often contribute significant funding, either voluntarily or as required by law, to community development initiatives.</p>	<p>Fiscal terms for projects are agreed at a government level, and while they may redistribute revenues to regional and local governments, they do not always link directly to the local communities or regions where the operations occur. However, agreements often mandate local content provisions, and most companies have social investment strategies, and make voluntary contributions to community development initiatives.</p>	<p>Emphasis on petroleum production-sharing agreements may diminish interest in community-level agreements. This may create a heightened need for arguing the business case and developing internal capacity to negotiate with communities.</p>

The development of CDA resources has been predominantly framed around mining due to the acute impacts experienced by nearby communities. Issues over water, waste and transformed landscapes define mining's interactions with communities. Cases where community concerns have caused project delays, or even conflict, have driven the mining industry's agreement-making agenda. The global mining industry's Mining, Minerals and Sustainable Development project carried out between 2000 and 2002 propelled the industry to redefine its social performance, including the use of agreements to positively engage impacted communities.

Notwithstanding the mining industry's progress over the past two decades, some of the earliest agreements with indigenous groups were made by the oil and gas industry. Since the Indian Self-Determination and Education Assistance Act was enacted in 1975 in the USA, agreements were struck by tribes and oil companies, including large companies such as Exxon.¹⁷ This informed some of the earliest agreements with Australian Aboriginal people under the 1976 Land Rights Act. For example, the 'Mereenie Oil and Gas Agreement' signed in 1982, was the second agreement made for resource extraction on Aboriginal freehold land in Australia's Northern Territory.

The proclivity of the industry towards agreement-making relates to the strategic nature of oil and gas and its importance to national governments around the world. While mining legislation tends to be prescriptive, petroleum regulations are often cast in general terms, with the details of arrangements negotiated with prospective companies via host country agreements, such as production-sharing agreements or agreements for petroleum concessions.

In addition to royalties and other financial returns, host country agreements typically emphasize local procurement, local training and local employment. The impression may be that host country agreements and benefits negotiated with national governments give sufficient guarantee over security of investment at the local community level.

Experience in places such as the Niger Delta demonstrate that relying on such benefits trickling down from national governments to regional and local levels is rarely sufficient to address the local level impacts felt by communities from major petroleum developments. Even in developed economies, such as Western Australia, the government's 'royalties for regions' programme, where 25% of mining and onshore petroleum royalties are set aside for regional development, has struggled to demonstrate long-term benefits from funded projects.

International focus is firmly on the transformative potential for developing nations to harness the wealth of their natural resources. The sights of global institutions, such as the United Nation's Sustainable Development Solutions Network, the World Bank, International Finance Corporation and the World Economic Forum, are fixed on maximizing the extractive industry's contribution to sustainable national and local development in host countries and communities.

CDAs are increasingly promoted among the new approaches to supporting government, industry and communities in realizing more sustainable community development in the extractive sector. With the search for resources extending into increasingly remote areas across the globe, extractives can act as a catalyst for positive economic and social change in areas that have limited opportunities for development.

IPIECA is responding to these goals through the development of the CDA tool, and the promotion of leading practice in CDA development and implementation.

¹⁷ The Navajo-Exxon agreement was approved by the US Secretary of the Interior on 4 January 1977.

References and further reading

References and further reading

Key resources consulted in this document and recommended for further reading are listed below. Where information in these resources relates to the different elements of the CDA tool, this is indicated in the column on the right.

	Relates to CDA tool element:				
	1	2	3	4	5
<p>REFERENCES</p> <p>Bocoum, B., Sarkar, S., Gow-Smith, A., Morakinyo, T., Frau, R., Kuniholm, M. and Otto, J. M. (2012a). <i>Mining community development agreements: source book (English)</i>. World Bank, Washington DC. http://documents.worldbank.org/curated/en/522211468329663554/Mining-community-development-agreements-source-book</p>	✓	✓	✓	✓	✓
<p>Bocoum, B., Sarkar, S., Gow-Smith, A., Morakinyo, T., Frau, R., Kuniholm, M. and Otto, J. M. (2012b). <i>Mining community development agreements: source book (Vol. 2) : World Bank extractive industries sourcebook: good practice notes</i>. World Bank, Washington DC. http://documents.worldbank.org/curated/en/388421468151145000/World-Bank-extractive-industries-sourcebook-good-practice-notes</p>	✓	✓	✓	✓	✓
<p>Gibson, G. and O’Faircheallaigh, C. (2015). <i>IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements</i>. Commissioned by Walter and Duncan Gordon Foundation (The Gordon Foundation). Revised September 2015. http://gordonfoundation.ca/app/uploads/2017/03/IBA_toolkit_web_Sept_2015_low_res_0.pdf</p>	✓		✓	✓	✓
<p>ICMM (2012). <i>Community Development Toolkit</i>. International Council on Mining and Metals. https://www.icmm.com/en-gb/publications/mining-and-communities/community-development-toolkit</p>	✓	✓	✓	✓	✓
<p>IFC (2007). <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets</i>. International Finance Corporation, May 2007. https://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES</p>			✓		
<p>IFC (2009). <i>Addressing Grievances from Project-Affected Communities: Guidance for projects and companies on designing grievance mechanisms</i>. International Finance Corporation. Washington DC. http://www.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18</p>					✓

	Relates to CDA tool element:				
	1	2	3	4	5
Rio Tinto (2016). <i>Why Agreements Matter</i> . A resource guide for integrating agreements into Communities and Social Performance work at Rio Tinto, March 2016. https://www.riotinto.com/ourcommitment/spotlight-18130_21569.aspx	✓	✓	✓	✓	✓
World Bank (2008). <i>A Guide to Designing and Implementing Grievance Mechanisms for Development Projects</i> . Office of the Compliance Advisor/Ombudsman (CAO) for the International Finance Corporation (IFC). Washington DC. http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf					✓
FURTHER READING					
CCSI (2016). <i>Emerging Practices in Community Development Agreements</i> . Briefing note, February 2016. Columbia Center on Sustainable Investment. http://ccsi.columbia.edu/2016/02/10/emerging-practices-in-community-development-agreements/	✓		✓	✓	✓
ICMM (2010). <i>Good Practice Guide: Indigenous Peoples and Mining, Second edition</i> . International Council on Mining and Metals. http://icmm15ipg.interactiveinvestor.com.au/	✓		✓	✓	✓
Limerick, M., Tomlinson, K., Taufatofua, R., Barnes, R. and Brereton, D. (2012). <i>Agreement-making with Indigenous Groups: Oil and Gas Development in Australia</i> . Centre for Social Responsibility in Mining (CSR), University of Queensland, Brisbane. ISBN number 978-0-9873402-0-7. https://www.csr.uq.edu.au/publications/agreement-making-with-indigenous-groups	✓		✓	✓	✓



IPIECA is the global oil and gas industry association for advancing environmental and social performance. It develops, shares and promotes good practice and knowledge through industry collaboration. IPIECA convenes a large portion of the global oil and gas industry across the value chain and is the industry's principal channel of communication with the United Nations.

Through its member-led groups and executive leadership, IPIECA brings together the collective expertise of oil and gas companies and associations. Its unique position within the industry enables its members to contribute effectively to the sustainable development agenda.

MEMBERS

AIP	Equinor	PAJ	Schlumberger
AMEXHI	ExxonMobil	PDO	Shell
Anadarko	Fuels Europe	Pemex	SNH
API	Halliburton	Pepanz	Total
APPEA	Hess	Petrobras	Tullow Oil
ARA	Husky Energy	Petronas	UKPIA
ARPEL	IBP	PTTEP	VNPI
Baker Hughes	INPEX	Qatar Petroleum	Wintershall
Bechtel	IOGP	Repsol	WLPGA
BHP	JPEC	Sapia	Woodside
BP	Kosmos	Saudi Aramco	WPC
Canadian Fuels Association	Libya NOC		
CAPP	Marathon Oil		
Cheniere	McDermott		
Chevron	Noble Energy		
CNOOC	NOGEPA		
CNOOC Nexen	Norsk olje & gass		
ConocoPhillips	Oil & Gas UK		
Concawe	Oil Search		
Encana	Olie Gas Danmark		
Eni	OMV		
	Occidental		



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