

Extractive Sector Forum Discussion Paper I: **Stakeholder Engagement in the Extractive Sector in Kenya –** **Pointers on Good Practice**

April, 2016

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Introduction

The extractive industry has significant potential to lift people out of poverty and contribute to sustainable development because of the high economic rents it generates, providing governments with considerable revenues for infrastructure development and delivery of social services¹. At the same time, the sector has been associated with extensive social, economic and environmental impacts on local communities, workers and even nationally, prompting a demand for greater stakeholder engagement to explain and involve stakeholders in managing the impacts.

As extractive sector companies make decisions to invest, there is need to consciously plan how they will engage different stakeholders affected by their operations, starting with developing a stakeholder engagement strategy at the initial phase of their operations. Stakeholder engagement should be a core part of their business-planning strategy and operations at the corporate and asset level. This however raises several critical challenges for companies and communities that are addressed below. This note

¹World Bank, “[Extractive Industries Value Chain](#)” (May 2009)

UNDP et al, “[Mapping Mining to the Sustainable Development Goals: A Preliminary Atlas](#)” (January 2016)

does not focus on workers but they are clearly a key stakeholder constituent for any company and should include both employees and temporary and contracted workers.

Part I: Defining Stakeholders: A Broad Approach

How stakeholders are defined is critical for a successful stakeholder engagement strategy. There are a wide range of definitions of “stakeholders” but generally the term is used to include individuals or groups and organisations that are positively and negatively impacted by decisions and actions as well as those that have an interest in the decisions a company makes and products and services it produces². While some may consider stakeholders as only that group on which the company may have a direct impact, it is important to also consider those on whom it has an indirect impact as well.³ Going beyond a narrow approach to stakeholder definition that focuses tightly on one group e.g. directly affected community, and not identifying other groups and organisations that may have a shared interest in the outcome makes it harder to achieve success.⁴

Stakeholder engagement is emerging as a means of describing a broader, more inclusive and a relationship building process⁵. Successful stakeholder engagement shows that a broader definition of stakeholders has worked well⁶. This is because using a broader definition of stakeholders allows a more detailed examination of different groups of stakeholders’ scope of interest, influence and power and with a more targeted approach to meeting their interests. Missing out on key groups such as women, youth, older persons as well as international development community means missed opportunities to understand different perspectives, gain insights into core risks and concerns, solicit new and locally-tuned ideas for preventing and mitigating risks. Furthermore, a broader definition is essential as it helps companies identify opportunities that may exist for collaboration thereby helping them to compensate for their weaknesses on some issues⁷.

Part II: Defining Stakeholder Engagement: A Relationship Rather Than a Meeting

How broad should stakeholder engagement be? The IFC Handbook on Stakeholder Engagement notes that an ineffective engagement strategy rarely extends in any meaningful way beyond the project planning phase⁸. Fundamentally stakeholder engagement is about building an on-going relationship which means it

² <http://mba.mit.edu/asia/waves-2014/Stakeholder-engagement-Kellogg's-Case-Study.pdf>

³ Earlier extensive work on addressing impacts of large-scale dam projects usefully framed the concept of *voluntary risk takers* (private companies who manage their increased exposure to risk by requiring higher financial rates of return and using highly developed risk management approaches including contractual agreements, insurance and third party recourse and arbitration mechanisms) and *involuntary risk bearers* (local communities who have no choice about bearing risks of a project). See [World Commission on Dams Final Report](#) (2000), p. 206.

⁴ Wayne Dunn, “[From Pariah to Exemplar: Applying the six best practices in stakeholder engagement.](#)”

⁵ See for example IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)” (May 2007)

⁶ Wayne Dunn, “[From Pariah to Exemplar: Applying the six best practices in stakeholder engagement.](#)”

⁷ See for example the five common mistakes companies make when engaging stakeholders: Wayne Dunn, “[Stakeholder Engagement: Five common mistakes.](#)”

<http://www.csrrtraininginstitute.com/knowledge-centre/stakeholder-engagement-five-common-mistakes/>

⁸ IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)” (May 2007)

should cover a broad spectrum of time and interactions. It is not a one-off event, such as a consultation held as a compliance step in the environmental impact assessment process, but rather a continuous process that evolves, just as projects evolve into new phases and new decisions are made. This approach is essential because it acknowledges the changing expectations and interests of stakeholders as projects progress and advance into new phases or are phased out. It is thus imperative that stakeholder engagement be viewed as a continuous process between the company and those potentially impacted and spans the entire life of the project, though closure and decommissioning. This can best be achieved when stakeholder engagement is integrated into core business activities or measured in terms of its effectiveness in building constructive working relationships.⁹

Part III: Why Does Stakeholder Engagement Matter?

Stakeholder engagement is a multifaceted tool that provides a framework through which project proponents can seek multi-stakeholder consensus on matters relating to the project; manage expectations; and manage conflict amongst various stakeholders.

Whether stakeholder engagement matters or not depends on what the stakeholders i.e. companies, civil society organizations and communities among other stakeholder seek to achieve. This is informed by what all stakeholders need and want to know as they engage. For businesses it's whether it makes good business sense to engage stakeholders¹⁰. When companies understand that stakeholder engagement is a core part of business planning strategy and operations, then they will proactively seek to engage.

Meeting legal obligations and international standards: Extractive activities are carried out in the context of laws and regulations as well as international standards that place responsibilities on companies and give rights to other stakeholders¹¹. In Kenya, public participation is entrenched in the Constitution¹². The Constitution further provides for public participation in the management, protection and conservation of the environment¹³. Participation of the people more than just being a national value and principle, is an expression of sovereignty of the people. Participation thus empowers people to determine their destiny¹⁴. The UN Guiding Principles on Business and Human Rights call upon businesses to continuously conduct human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts. This process should involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of its operations¹⁵. It through stakeholder engagement that human rights due diligence and context analysis is achieved and the process not only identifies

⁹IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#) (May 2007)

¹⁰ OECD, [“OECD Due Diligence Guidance for Responsible business conduct: Meaningful Stakeholder Engagement in the Extractive Sector”](#) (2016)

¹¹ OECD, [“OECD Due Diligence Guidance for Responsible business conduct: Meaningful Stakeholder Engagement in the Extractive Sector”](#) (2016)

¹² Articles 10(2) (a) includes participation of the people as part of the national values and principles of governance.

¹³ Article 69(1)d- on environment and natural resources

¹⁴ Commission for the Implementation of the Constitution, [“Effective citizens’ participation: Broadening Citizens Opportunities under the Constitution of Kenya 2010.”](#) (December 2015)

¹⁵ Principle 17, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

human rights and other related risks, but also helps in understanding societal expectations and aligning them to the business operations.

Mutual benefits: Understanding stakeholder engagement as a mutually beneficial process for all stakeholders provides additional incentives to get the process right¹⁶. Consequently, defining value for all parties particularly for companies, is thus essential. The engagement process helps companies to understand the evolving interests, issues and concerns of those impacted by business related activities over the life of the project¹⁷ but also, importantly builds confidence of stakeholders in the process as they see their interests met. Communities benefit by having their concerns and interests taken on board and addressed as companies make decisions.

Building relationships: Systematic and ongoing stakeholder engagement is about building a two-way relationship which helps build trust between both sides. The two-way communication enables vital feedback from both sides and thus can contribute to improving relationships and creating more transparent, cooperative, and productive conversations¹⁸. Perceptions are better understood when there is an ongoing and open engagement process with clear outcomes. Companies are strategically able to change their attitudes towards their stakeholders when they understand their concerns and vice-versa.

Building opportunities for collaboration: Quality stakeholder engagement can bring diverse perspectives together for collaborative problem solving. Good stakeholder engagement should result in concrete outcomes around issues identified for collaborative action.

Avoiding or limiting costs of conflicts with stakeholders: Stakeholder related risks can be significant, especially in situations where engagement is defensive or reactionary. The cost implications can be high, starting with time costs as a result of delays or closure, to reputational risks that may negatively affect funding of projects. Another critical cost implication is staff time spent in resolving conflicts which would otherwise have been avoided if there was proactive and sustained engagement¹⁹.

Part IV: Developing an Effective Engagement Strategy: What Should Companies Consider?

Stakeholder engagement can sometimes be a difficult but eventually a rewarding process. Where stakeholder engagement is conducted as a reactionary effort to fire-fight an already fragile situation, the results are generally unsatisfactory for both parties. Being proactive and getting it right early is critical for any successful engagement process. The process should include the following considerations which are a summary of selected key points from the wider literature on stakeholder engagement (see Section X):

¹⁶BSR, "[Six Ways for the Extractive Sector to Improve Stakeholder Engagement.](#)" (July 2013)

¹⁷ Jonathan Ballantine, "[Rebuilding trust through stakeholder engagement: Part One - Why stakeholder engagement matters?](#)" (March 2009)

¹⁸ Alberta Energy Regulator, "[Alberta Energy Regulator Stakeholder Engagement Framework.](#)" (July 2015)

¹⁹ Davis, Rachel and Daniel M. Franks. 2014. "[Costs of Company-Community Conflict in the Extractive Sector.](#)" *Corporate Social Responsibility Initiative Report No. 66*. Cambridge, MA: Harvard Kennedy School.

Starting with a longer-term vision: Relationships are built and maintained over long periods of time in the extractive sector, particularly once operations move past the exploration phase. This is an important consideration that can help companies justify different types of decisions if they have long-time horizon view of the entire engagement process²⁰. Companies thus should focus on building longer-term relations with stakeholders and investing in the process through building internal capacity and making internal commitments to building lasting relationships. Engagement is thus seen not as a short-term way of negotiating the lowest compensation rates but about gaining and maintaining a broader social license to operate in the area on a long-term horizon²¹. The IFC Stakeholder Engagement Handbook observes that companies that take this view tend to invest more in the process and see the value of consistently following through their commitments to stakeholders. They also make the effort to personalise relationships through informal and social interactions, and work through their employees to build links to local communities and maintain a consistent face of the company²². Companies in essence integrate stakeholder engagement in their business operations.

Starting early: Starting engagement early can be a determinative factor in the success rate of any engagement process. Getting in early is thus critical as it helps understand the context and build trust with stakeholders especially communities which takes time²³. Engaging at a much earlier stage of the project helps signal to stakeholders that their interests and views in decision making are important and will be taken into consideration. It also allows early building trust and getting to understand stakeholder concerns, interests and expectations. Lack of early engagement may create a vacuum which is filled by rumours and false information, creating a breeding ground for suspicion.

Understanding that engagement is more than managing expectations: There has been much discussion in the media about managing expectations about the extractive sector. While there is clearly a need for both the government and companies to provide clear and factually correct information about the sector and its potential impacts on the country, it is equally as important that companies and government realise that stakeholders also have interests and not only expectations. Many of these interests are protected by law or evolving international standards, such as the UN Guiding Principles on Business and Human Rights. So while the engagement process is important in managing expectations, it is certainly also a crucial part of appropriately identifying and addressing stakeholder's rights and interests.

Designing a relevant and contextualized engagement strategy: There is no one size fits all when it comes to stakeholder engagement²⁴. Different contexts have unique issues that require a tailor-made strategy to achieve the best outcomes. In Kenya extractive sector operations are situated in regions with unique cultures and way of life and are influenced differently by the social and political

²⁰IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)" (May 2007)

²¹Neil Jeffrey, "[Stakeholder Engagement: A Road Map to Meaningful Engagement](#)" (July 2009).

²² IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)" (May 2007)

²³ Wilson, E, Best, S, Blackmore, E and Ospanova, S (2016) "[Meaningful community engagement in the extractive industries: Stakeholder perspectives and research priorities.](#)" International Institute for Environment and Development, London.

²⁴IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)" (May 2007)

circumstances. Businesses should thus scale their strategies relative to the risks and impacts their projects are likely to create²⁵ to ensure that engagement is respectful and productive.

Using appropriate and diverse methods of engagement: Successful engagement is as good as the methods used especially in communication and information sharing. In some contexts community reference groups have been used and proven successful because they create an ongoing two-way communication process acting as a conduit between the community and project developer and assisting with early identification of emerging issues²⁶. Such groups should have credibility in the community and should meet frequently in the early days of the project. Through the group, business receives, listens and provides feedback and /or action on community issues and concerns. Communication therefore builds up trust among stakeholders and it enables stakeholders to influence the decision making process. The most robust approach would be however to employ a number of different methods. As stakeholders are regularly engaged, new issues emerge that require innovative approaches and therefore use of community liaison officers, open days, regular walk through's in the community are approaches that can equally achieve good results. The idea is to employ varied methods as possible to achieve good results.

Communicating timely, accurate and understandable information: Information sharing is effective based on timeliness of communication and in an easy to understand format. When determining how to present information it's essential to consider the level of technical detail, local language and dialects, cultural sensitivities, literacy levels and most crucial are the local methods of disseminating information like use of oral explanation²⁷.

Including internal stakeholders: Paying attention to internal stakeholders is equally as important as external stakeholders. They are central to a successful engagement process as without this, stakeholder engagement can end up without much support internally and be seen simply as an additional cost to the operation rather than as a critical support function. This approach is based on identifying a core group of internal champions that recognize the value in stakeholder engagement as systematically as the outreach to external stakeholders. Support can be built through identifying common interests and shared value and created alignment with the specific interests of internal stakeholders. Internal stakeholders also have to be systematically and continuously engaged to secure the needed goodwill and long term support over the life of the project.

Partnership Building: Partnership building is essential in stakeholder engagement in compensating for a company's capacity on certain issues. Partners in this case are those like humanitarian organizations other than the community other than the community that have stronger contacts, influence and expertise on specific issues that companies may not have and can piggyback on to build stronger relationships. Working through partners has proven beneficial for some companies. Of concern though is who companies should bring on board as partners for the stakeholder engagement to be seen as credible²⁸.

²⁵ IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#) (May 2007)

²⁶ WRI, "[ccs and Community Engagement Case Studies](#)." (2010)

²⁷ http://nbs.net/wp-content/uploads/NBS_Community-Engagement-Guide.pdf

²⁸ <http://www.csrrtraininginstitute.com/knowledge-centre/from-pariah-to-exemplar-applying-the-six-best-practices-in-stakeholder-engagement/>

Managing grievances amongst stakeholders: Grievances can arise from disputes relating to land access and compensation, fear of the change to community life as a result the setting up of the project, environmental damage, limited economic opportunities including employment, unexplained change in the project amongst many others. Research has shown that managing conflict is expensive²⁹ and thus there is a business case for risk management tools for managing and preventing potential conflict. Meaningful stakeholder engagement has the potential to be that tool as it a process that allows the company to understand the community in which they operate, their needs and interests, but can also be used to agree to solutions to issues of concern.

Understanding the political economy of the process: As companies develop their engagement strategies they have to be alive to the power dynamics within their context. How do companies then ensure that they are engaging the legitimate stakeholders or representatives of the stakeholders? Contexts are thus best understood by being sensitive to stakeholder dynamics be it culture, gender and political balance³⁰. Understanding this dynamics is critical to avoiding elite capture and engaging those viewed as legitimate stakeholders and groups that are most marginalized. Consulting a wide range of stakeholders is suitable in understanding the dynamics and avoiding the risk of elite capture.

Part V: Developing an Effective Engagement Strategy: What Should Communities Consider?

Local communities are a key stakeholder for the extractive sector, due to their proximity to projects. They are often directly and indirectly impacted by the projects. The need to consult communities has increasingly been framed as a human rights issue, influencing lenders and government actions³¹. Just as companies, communities need to carefully consider how they engage. Communities should therefore consider the following:

Define process and goals for engagement³²: As communities' plan to engage companies, they must be clear what they want to achieve or at least develop clear processes about how they will jointly develop their goals. Systematic networking and learning from other communities who may have been affected by similar projects is thus critical.

Community solidarity [and representation]: How communities organize is essential for an effective engagement. Success is achieved as communities build collective action which is much stronger than individuals acting separately to try to change a situation without a coordinated approach³³. Community representatives are central to organizing and facilitating community meetings to discuss the situation and develop a common message and engagement strategy. Companies work well with

²⁹ Rachel D, and Daniel F, "[The cost of conflict with local communities in the extractive industry.](#)" First international seminar on social responsibility in mining, October 2011.

³⁰ GIIRS, "[Emerging Market Assessment Resource Guide: Stakeholder Engagement.](#)"

³¹ Chatham House, "[Revisiting Approaches to Community Relations in Extractive Industries: Old Problems, New Avenues?](#)" (4 June 2013).

³² Chatham House, "[Revisiting Approaches to Community Relations in Extractive Industries: Old Problems, New Avenues?](#)" (4 June 2013).

³³ Blackmore E., Bugalski N., Pred D. (2015). *Following the money: an advocates guide to securing accountability in agricultural investments*. IIED/IDI, London/Asheville

organized communities since there is a clear channel of communication and concerns raised are those collectively agreed upon. As a critical step, communities should be proactive in appointing their own legitimate representatives, rather than leaving it to companies to choose who will represent the community. Developing a process to appoint or elect their own representatives to engage with companies helps ensure that communities do not suffer from elite capture.³⁴ The representatives should be committed to acting in the best interest of the community and defend community's interests including different groups within the community. Communities, like companies, must be prepared to address conflicts of interest of their representatives, political capture of representative's interests, etc. While consistency of representation is important, it will be important to consider a process for rotating representatives to engagement so that representatives do not become entrenched, becoming the sole gateway for conversations.

Inclusiveness: The community engagement process should be inclusive of all groups in the community. Different groups that tend to be left out such as women, youth and older persons should be consulted. The community message and demands should incorporate all of the different interest within the community. This is best achieved through ensuring that the particular groups within the community who are less engaged in the process are given an opportunity to ask questions and express their ideas. Separate meetings for these groups are important in establishing their concerns and interests.

Evidence based engagement (having the right information when engaging): Engaging based on allegations often fails to result in any meaningful outcomes. Collecting evidence and accurately reporting about the harms, or anticipated harms, as well as the benefits and the potential benefits of a project is important³⁵. Such an approach also gives credibility to communities' engagement and ensures that claims are neither exaggerated nor understated.

Developing negotiating capacity and technical expertise: The extractive industry is a complex one. This means that communities can be successful as they engage when they understand how the industry is organised. This also helps in aligning their interests to the industry value chain and over time building their internal capacity to raise legitimate concerns. Capacity is central in situations where communities negotiate for instance community development agreements³⁶.

Realistic demands: Communities grapple with balancing expectations and being realistic in their demands. Addressing already raised expectations is best achieved by critical understanding of the sector and the potential impacts on and benefits to the community as well as the constraints on the company at different points in the project cycle. There is no point in sending a list of demands that will be impossible to achieve. It is important for the community itself to manage its own expectations by explaining that they should think about what they want and what their rights are, as well as what they think could be a

³⁴ OECD, "[OECD Due Diligence Guidance for Responsible business conduct: Meaningful Stakeholder Engagement in the Extractive Sector](#)"(2016)

³⁵Blackmore E., Bugalski N., Pred D. (2015). *Following the Money: An Advocates Guide to Securing Accountability in Agricultural Investments*. IIED/IDI, London/Asheville

³⁶ World Bank, "[Mining Community Development Agreements Source Book](#)."(March 2012)
http://siteresources.worldbank.org/INTOGMC/Resources/mining_community.pdf

practical outcome³⁷. Additionally, communities should in as far as possible delink their expectations from the resources at hand. This is because, expectations which are often related to basic rights, should be met irrespective of the presence of the natural resource wealth in their community.

The role of civil society organizations

Civil society organizations are present in many communities well before the arrival of extractives companies often focusing on other matters. However, the arrival of extractives companies often creates concerns among the communities which they work with which in turn focuses the attention of those CSOs to the sector. Additionally, at an international level, there are non-governmental organizations that focus on the extractives sector and that follow the sector wherever it goes often through partnerships with local organizations. These synergies are useful in helping local organizations build knowledge on the sector and also to amplify and carry the voice of local communities at different fora.

CSOs bridging information gaps: information asymmetry is a real barrier to stakeholder engagement particularly for affected communities. Moreover, communities tend to trust CSOs more than government or companies. Thus companies should consider establishing relationships with CSOs through which information from and about the company and community can flow. What more, local CSOs can help companies navigate and understand the community structures thus ensuring that stakeholder engagement is more inclusive.

Part VI: Useful Resources and Tools:

1. OECD, "[OECD Due Diligence Guidance for Responsible business conduct: Meaningful Stakeholder Engagement in the Extractive Sector](#)"(2016).
2. International Institute for Environment and Development, "[Meaningful community engagement in the extractive industries: Stakeholder perspectives and research priorities](#)" (2016).
3. CORDAID, "[Informing Local Communities, Civil Society and Local Government about Oil & Gas: a Practical Guide on Technical Aspects](#)" (February, 2016).
4. International Council on Mining and Metals, "[Understanding Company-Community Relations Toolkit](#)" (2015).
5. International Institute for Environment and Development "[Following the Money: An Advocates Guide to Securing Accountability in Agricultural Investment](#)" (2015).
6. Commission for the Implementation of the Constitution, "Effective citizens' participation: *Broadening Citizens Opportunities under the Constitution of Kenya 2010*" (December 2015).
7. Institute for Human Rights and Business and Shift/European Commission "[Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)" (2014).
8. Shift, "[Bringing a Human Rights Lens to Stakeholder Engagement: workshop report No.3](#)" (August, 2013).
9. Chatham House, "[Revisiting Approaches to Community Relations in Extractive Industries: Old Problems, New Avenues?](#)" (4 June 2013).

³⁷ Blackmore E., Bugalski N., Pred D. (2015). *Following the Money: An Advocates Guide to Securing Accountability in Agricultural Investments*. IIED/IDI, London/Asheville

10. Breaking Ground: “[Engaging Communities in Extractives and Infrastructure Projects, World Resources Institute](#)” (2009).
11. [Jodi Liss](#), “[How to talk to a local community](#)” (2014).
12. Doughty Centre, “[Stakeholder Engagement: A Road Map to Meaningful Engagement](#)” (July 2009).
13. Wayne Dunn, “[From Pariah to Exemplar: Applying the six best practices in stakeholder engagement](#)” (2004).