



A NEGOTIATION HANDBOOK FOR COMMUNITIES AND TRADITIONAL LEADERS



BOOK 3: NEGOTIATION SKILLS

Strengthened Accountability Programme
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Acronyms

CDA	Community Development Agreement
CLC	Community Liaison Committee
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
GRI	Global Reporting Initiative
ICMM	International Council on Mining and Metals
ILO	International Labour Office
JCTR	Jesuit Centre for Theological Reflection
NGO	Non-Governmental Organisation
SAP	Strengthened Accountability Programme

1. INTRODUCTION

This Book is the third in a series of three books that together constitute the “Negotiation Handbook for Communities and Traditional Leaders”. The series of books is a product of the JCTR partnership with Diakonia and the Embassy of Sweden, under which the JCTR has been implementing the Strengthened Accountability Programme (SAP) in Solwezi in the North Western Province since 2014. One of the activities under the SAP was to produce a negotiation handbook for communities and traditional leaders to help them negotiate with local authorities and corporates. The series contributes to meeting the project outcome: “Targeted corporate sector acts transparently, are accountable to the rights holders, and contribute to socio – economic justice in targeted districts of North Western Province.”

Book 3 (Negotiation Skills) defines negotiations and outlines the negotiating process that the leaders and communities should follow in negotiating and making demands with the duty bearers including the mining firms and local authorities. This book should be read together with **Book 1 (Citizens Rights and Responsibilities)** and **Book 2 (Obligations of Corporates)** which provide the information that the traditional leaders and community members need to know, on human rights and corporate social responsibility, respectively, to help them engage government and corporates.

1.1 Who is this handbook for?

The negotiation handbook is a tool to be used by traditional leaders and their communities to enable them to demand accountability from local state institutions and compel corporates to demonstrate good corporate citizenship. The handbook will help traditional leaders, community leaders and members so that they can represent their communities and participate in making the decisions that affect them and to raise awareness of important issues when dealing with local and national government, and the large companies that operate in their areas.

1.2 Methodology

The methodology used in the development of this handbook was largely based on secondary data. This involved the review of the literature and laws on the rights and responsibilities of rights holders that traditional leaders and communities need to know as rights holders before they embark on any negotiations. The study also reviewed the literature and laws on corporate social responsibility that traditional leaders and communities need to be aware of, to enable them to negotiate and demand for good corporate citizenship from corporates operating in their communities. Through the JCTR office in Solwezi and project reports, the study obtained input from Traditional leaders, North-Western Council of Elders and communities on how best to involve communities and traditional leaders in negotiating with local government authorities and corporates operating in their communities.

2. NEGOTIATION SKILLS

2.1 What is negotiation?

Negotiation is a discussion between two or more people or parties intended to reach a beneficial or positive outcome. Negotiation is a process that aims at reaching an agreement or understanding on an issue that two or more people have differences on. Differences are easy to solve where both parties have the same objective. For example, if all the parties want a clinic to be built for the community, there will be no disagreement. A negotiation for lobola also falls in this category as both parties normally want the children to get married.

Differences will be more difficult to resolve where the objectives are completely different. For example, if one party wants a clinic built for the community and the other party wants a school. There are a number of possible outcomes from negotiation where the objectives of the parties are completely different.

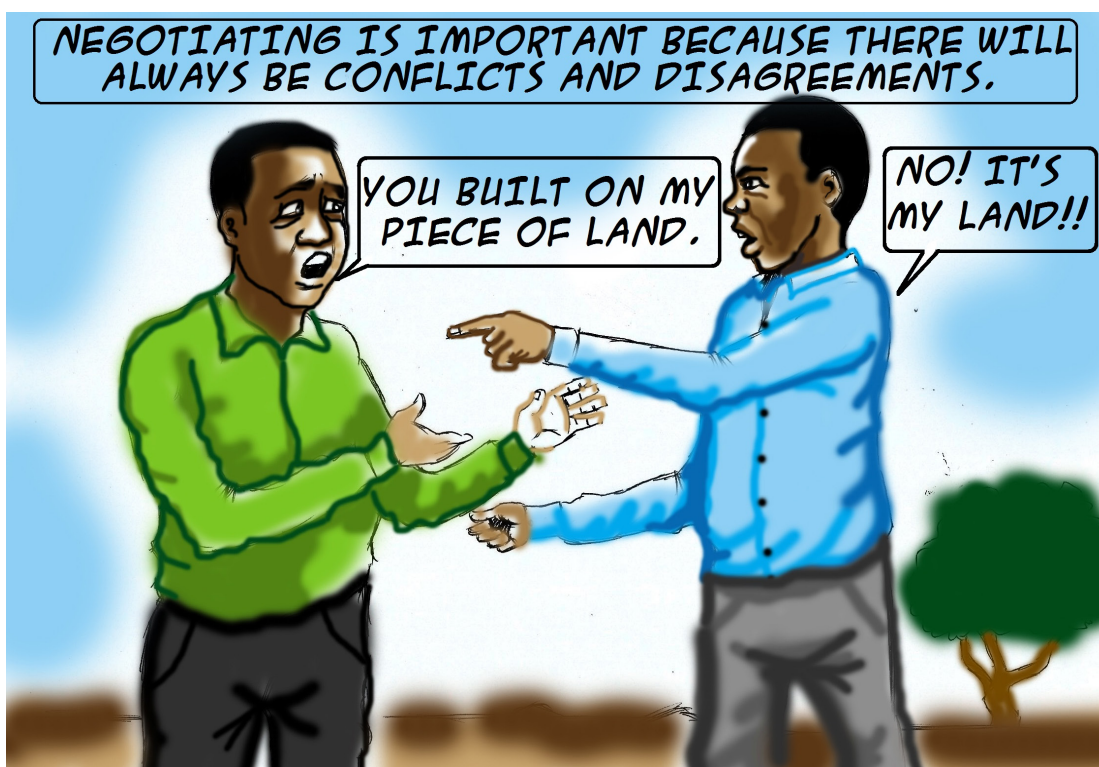
Box 1: What has been your experience in negotiations?

Spend a few minutes discussing your experiences of negotiation:

- a) What was the negotiation about?
- b) What was involved in the negotiation?
- c) Who was involved?
- d) Did you consider it to be a successful negotiation?

2.2 Why should you negotiate?

There will always be conflict and disagreements in communities because of differences in needs, wants, aims and beliefs of people. Without negotiations the conflicts and disagreements can lead to arguments and depending on the degree of dissatisfaction, can lead to social unrest.



Box 2: Reasons why you should negotiate?

There following are reasons why negotiations take place:¹

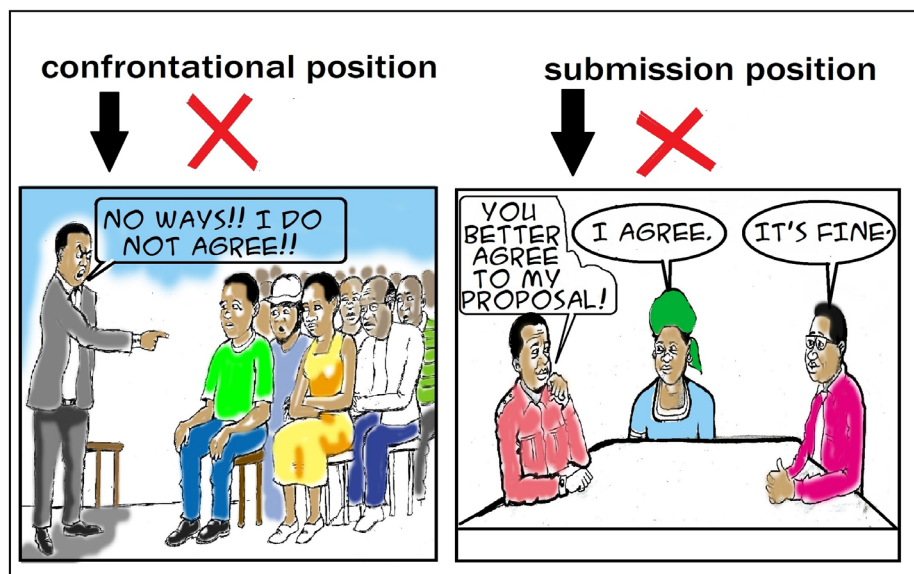
- a) to agree on how to share or divide a limited resource, such as land, or money, or time
- b) to create something new that neither party could do on his or her own
- c) to resolve a problem or dispute between the parties.

There are different positions that one can take in a negotiation. These positions are confrontation, submission, compromising or collaborating.

Box 3: Negotiating positions

- a) *Confrontation* – where one party refuses to cooperate and wants to force its position on the other party
- b) *Submission or surrendering* – where one party uses its strength or power to force its position on another party.
- c) *Compromising* – where each party agrees to give room to each other to allow the two parties reach an agreement
- d) *Collaborating* – this requires both parties to be willing to move from their original position in order to arrive at an agreed solution

Using confrontation or submission is unlikely to result in an outcome that is acceptable to all the parties and are therefore not good positions to take in negotiations. Negotiations in which the parties compromise or collaborate will produce a favourable outcome.

**2.3 What is involved in the actual negotiations?**

There are a number of steps that a negotiation follows. The steps ensure that the negotiation process runs as smoothly as possible.

The following are the five steps for effectively negotiating a favourable agreement:

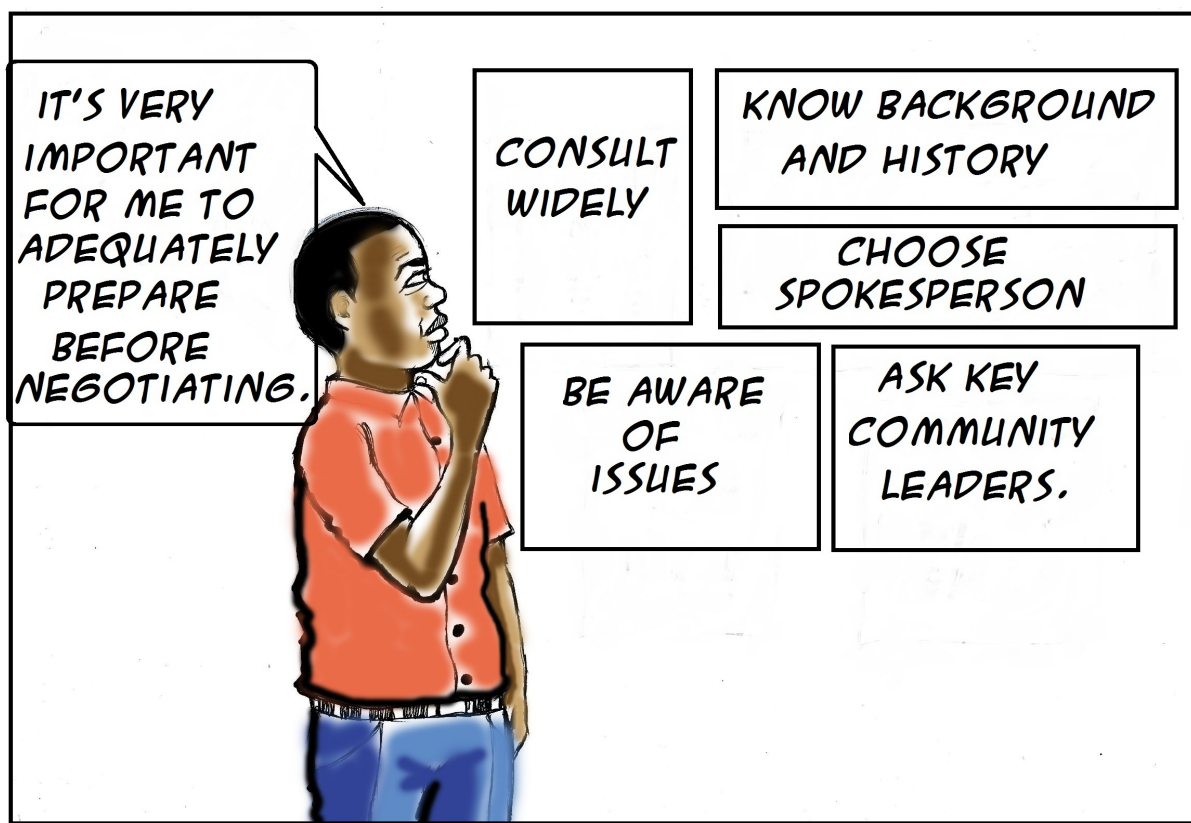
- 1) Preparation and planning
- 2) Definition of ground rules
- 3) Clarification and justification
- 4) Bargaining and problem-solving
- 5) Closure and implementation

¹ Joe and Sue Carter, The Nature of Negotiation, <https://www.scribd.com/document/280104974/Lewicki-SampleChapter01-pdf>

2.3.1 Step 1: Preparation and planning

Preparation and planning is the first step in the negotiation process. During this stage, it is important to organize and obtain the necessary information to enable one to effectively negotiate. One must be aware of the issues and the background or the history leading to the negotiation. Preparation and planning involves a number of activities.

- i. **Consult widely to identify the individuals who will represent the affected communities in the negotiation**



A negotiating team should include key community leaders and selected members of the community. Not everyone in a community can be involved in the actual negotiations. Communities are often involved through representative structures and organisations and community leaders. What is important is that members of the broader community should be able to feel that their voices will be heard and that their interests will be taken into account. The negotiating team must be representative of the community. You should allocate roles within your team indicating who will be the spokesperson and who will do what or how questions will be asked and answered.

- ii. **Build a coalition**

A coalition is when two or more people or groups agree to work together to do something together or for each other. In order to negotiate effectively, you must get the support of all the people or groups that in one way or another support your views. These may include civil society organisations (CSOs), community-based organisations (CBOs) etc.



Box 4: Why is it necessary to build a coalition?

Networking with Non-Governmental Organisations (NGOs) and other stakeholders offers a range of advantages, such as:

- a) Obtaining and sharing information
- b) Developing shared policy positions. Joint positions can carry more weight
- c) Credibility (strength in numbers)
- d) Pooling resources in negotiations

iii. **Identify and understand the issue**

You must spend time to know what you want and what you don't want. You must spend time understanding both the issues at hand and the needs of the community. An effort must also be made to ensure that all community members are heard even those who may hold minority or opposing views.

ENSURE THAT ALL MEMBERS OF THE COMMUNITY ARE HEARD INCLUDING THE MINORITY AND THOSE WITH OPPOSING VIEWS.



You should conduct a thorough assessment of the community needs in order to identify the real needs of the community. The community needs assessment involves meetings with community members to come up with the community priorities and ensure that all voices are heard. To avoid meetings that are too large and difficult to manage, the community could be divided into smaller groups. For example, during the dialogue meeting between Lumwana mine and its surrounding communities, Lumwana Mine asked respective villages to establish village sub-committees to be responsible for compiling village development needs and then submitting them through the Community Liaison Committee (CLC), a wider chiefdom body, for consideration.²

Box 5: Holding a community meeting²

A community meeting is an informal public gathering that brings together members of a community to discuss issues, voice concerns, and express preferences for community priorities. In a community meeting, a community leader or facilitator leads discussions on issues related to the community's strengths and potential challenges and encourages attendees to participate. It is advisable to appoint a locally respected individual or a representative from a community organization to serve as the meeting facilitator.

Advantages of community meetings include:

- a) Gives people of diverse backgrounds a chance to express their views
- b) Allows participants to build upon one another's responses
- c) Can involve a fairly large group of people at one time
- d) Can help identify respected community leaders to involve in the negotiations
- e) Can help discern the significance of a variety of issues
- f) Helps explore potential solutions

Challenges with community meetings may include:

- a) Can be difficult to maintain an open, comfortable, relaxed environment
- b) Can be difficult to keep the conversation on topic
- c) May be influenced by social constraints including gender disparities, power dynamics, cultural norms, etc.
- d) May be dominated by one or two vocal participants to the exclusion of others

² JCTR, "Promoting Faith and Justice", Strengthened Accountability Programme Annual Report 2015

³ JCTR, "Promoting Faith and Justice", Strengthened Accountability Programme Annual Report 2015

A COMMUNITY MEETING GIVES PEOPLE OF DIVERSE BACKGROUNDS A CHANCE TO BE HEARD.



The community discussions will likely result in a long list of community needs and wants, which will have to be prioritised. Following the community assessment, you will need to narrow down the long list of needs and wants identified in the community assessment and identify your bottom lines or your lowest acceptable position under which you shall have an agreement.

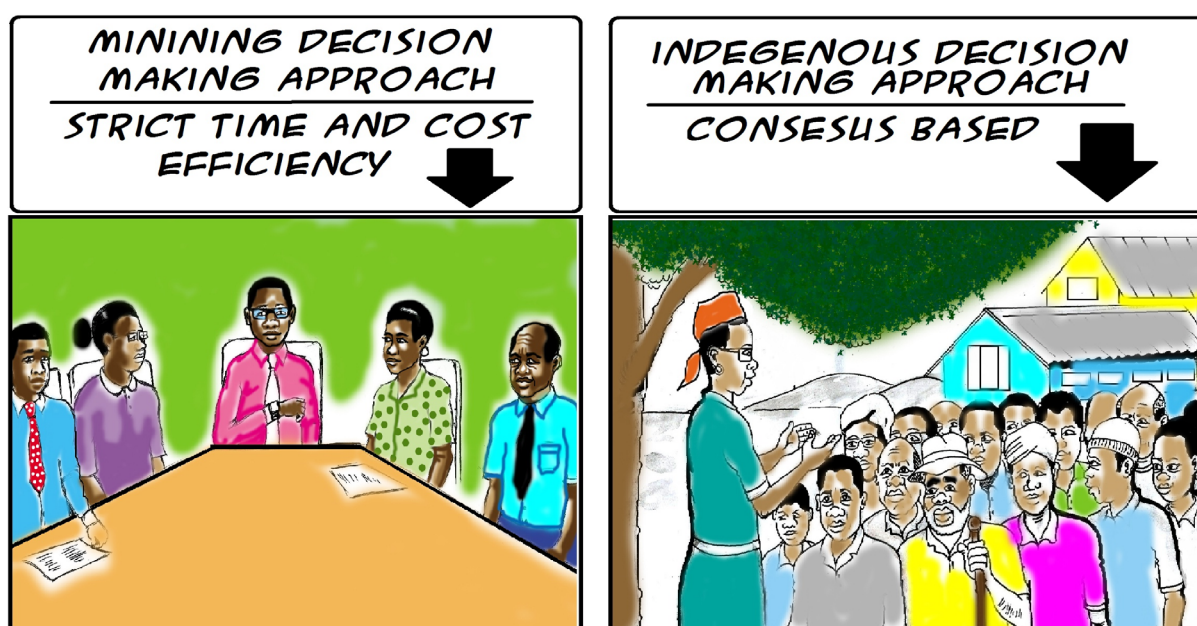
Box 6: What is your lowest acceptable position

In order to know whether or not to accept a proposed settlement obtained through negotiation, you must know whether or not you can get a better outcome in some other way. If the negotiated agreement is better than your “best alternative”, you should take it. If it is not as good as your “best alternative”, you should either go back to the negotiating table to try again, or leave the table to pursue other option(s).

As a community leader or member of the community, you must not be pressured into rushing the process of undertaking the community assessment. Mining companies or duty bearers may have time constraints within which they may want to conclude the negotiations. For the community, it is important that all members are carried on board and this can only be achieved through a consensus-based approach of participatory group consultation. There are differences between mining companies and traditional decision-making structures which must be taken into account in the community assessment process.

Box 7: Differences between mining company and traditional decision-making structures⁴

Decisions in indigenous communities are often reached through a consensus-based approach of participatory group consultation, negotiation and mediation. Often traditional community leaders play a key role in these decision-making processes. Traditional decision-making processes often take time so indigenous groups can fully consider the consequences of issues and can revisit particular issues multiple times if required. On the other hand, mining companies often operate under strict time constraints to achieve objectives under project milestones and decisions are often reached based on time and cost efficiency. To ensure that Indigenous Peoples have meaningful involvement in project decision-making processes and the achieved outcomes are representative of Indigenous People it is essential that companies are made to understand these differences in decision-making structures and seek to work through traditional decision-making processes where possible. Similarly, it is essential that indigenous communities do not submit into hurrying to making decisions to meet the strict time constraints that mining companies operate under.

**iv. Research**

Do your homework and gather as much information about the issues as you can. The more information you have about the issues in question, the greater your chances of getting a good deal. You should also get information on existing regulations and legislation.

2.3.2 Step 2: Lay down the ground rules for negotiations

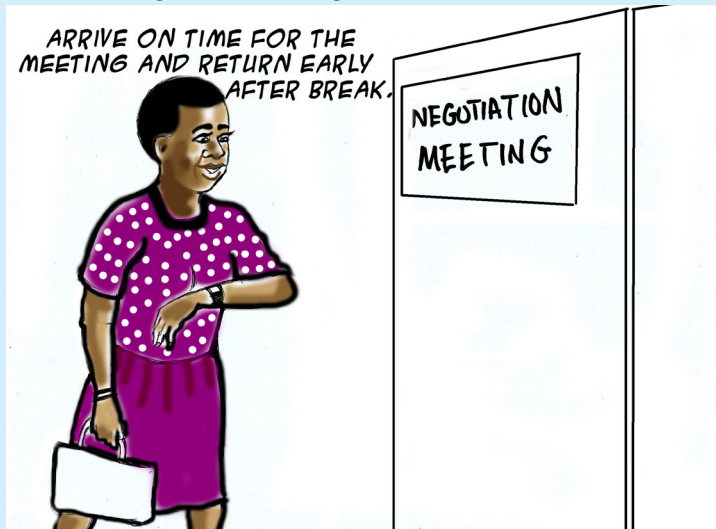
Once the preparation and planning work is completed, the parties to the negotiations are ready to begin the negotiations. In the opening session the parties must set the ground rules. Ground rules are a set of rules that guide how the parties to the negotiations will conduct themselves during the negotiations. The ground rules sets out the procedures of how the negotiations will be carried out. Ground rules are usually one of the first items that the parties agree to when the negotiation process starts.

⁴ J International Council on Mining and Metals (ICMM), Good Practice Guide: Indigenous Peoples and Mining

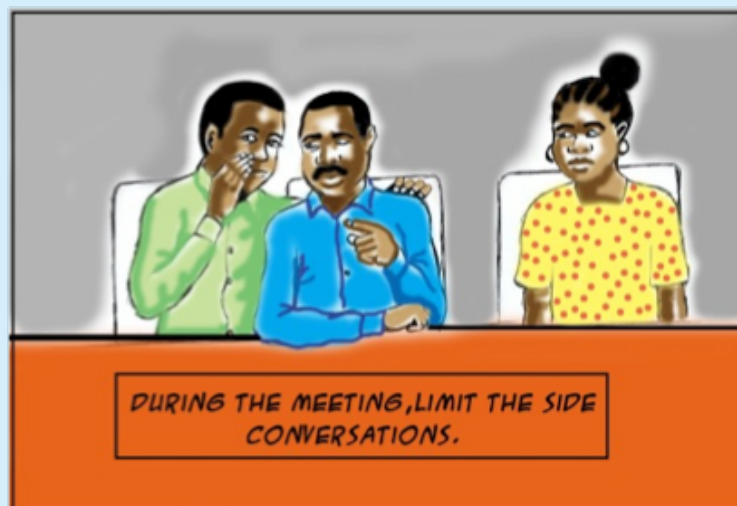
Box 8: Ground rules for conducting the negotiations⁵

The following are examples of ground rules that can be agreed upon to facilitate the orderly conduct of negotiations:

- i. Come to the meeting with a positive attitude
- ii. Treat members with respect both, during the meeting and outside of the meeting
- iii. Arrive on time for the meeting and in returning from breaks



- iv. Turn cell phones off or to vibrate. If you must take urgent calls on the cell phone, take your conversation outside
- v. Talk one at a time, talking only with the permission of the Chairperson
- vi. Limit side conversations



- vii. Be patient when listening to others speak and do not interrupt them
- viii. Members need to stay on the topic being discussed
- ix. When a topic or agenda item has been discussed fully, do not bring up the same subject again
- x. Don't discuss personal issues during the meeting
- xi. Don't make threats or rude comments
- xii. Be respectful of other people's ideas when they talk
- xiii. Do not judge the other people or point fingers.

⁵ Ground Rules for Meeting Conduct, <http://www.dds.ca.gov/ConsumerCorner/MakeComplexintoSimple/AdaptationSamplesMeetingRulespg9-16.pdf>

DO NOT JUDGE OTHERS OR POINT FINGERS



Ground rules can either be written or verbal and are there to assist the meeting to reach conclusion and not to delay the negotiations.

2.3.3 Step 3: Clarification and Justification

During this stage the parties to the negotiations state their initial positions and both parties are given the opportunity to seek for clarifications. Parties are also required to justify their demands and positions. The process of clarification and justification should not be confrontational but should be seen as a chance for the parties to inform each other on how they arrived at the initial position and why it is important to them to obtain their initial demands. Each party's position can be greatly assisted if the party has documents to support their position.

2.3.4 Step 4: Bargaining and Problem Solving

The real negotiation is the "give and take" process in trying to reach an agreement. Reaching an agreement will require each party to make concessions in order to accommodate each other's demands. It is here where the "give-and-take" happens. If one party just thinks of getting what they want without giving in to the other party's needs, it is unlikely that an agreement will be reached. It is only when both parties "give and take" that both parties' interests will be satisfied and a fruitful outcome will be reached. As you work towards reaching an agreement there a few tips you should always keep in mind.

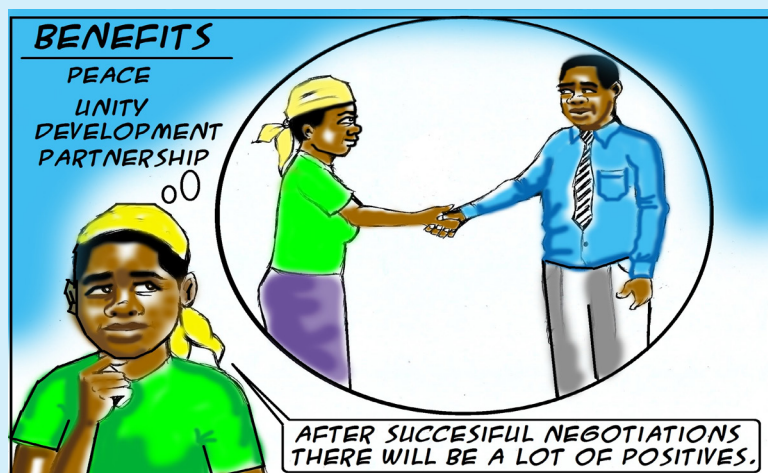
Box 9: Tips for bargaining⁶

- a) Never accept any proposal immediately, no matter how good it sounds.
- b) Never negotiate with yourself. Once you've made an offer, if the other party doesn't accept it, don't make another offer. Get a counter offer. It's a sign of weakness when you lower your own demands without getting your opponent to lower theirs.
- c) Never cut a deal with someone who has to 'go back and get the boss's approval.' That gives the other side more time to gather information and prepare a response.
- d) Just because a deal can be done, doesn't mean it should be done. If you can't say yes, it's no.
- e) Do your homework before you agree to a proposal. Get as much information about the issue and about the other side.
- f) Debrief immediately after every major session. Debriefing helps you prepare for the next session and also to identify and correct mistakes that you may have made in the previous session

In this process, the two parties work with each other to come up with solutions that benefit them both. For success in this process, both parties will need to identify with and understand each other's positions, and not show or express hostility to one another.

Box 10: Essential steps to reaching an agreement⁷

- a) **Agree that there is an issue to be negotiated:** What is the common opportunity or challenge we can help each other about?
- b) **Identify the benefits:** What are the benefits that will come to each of us?



- c) **Suggest the idea:** Think of as many possible outcomes as you can. In negotiations you want to explore a range of ideas and possibilities: do not get locked in a single point solution.
- d) **Work together:** Identify the potential difficulties and how you will overcome them. By finding a solution together both sides will own the solution and both will feel committed to it.

2.3.5 Step 5: Closure and Implementation

The final step in the negotiation process is reaching an agreement. An agreement is usually reached when both sides' interests have been taken into account. An agreement must be clear to both sides to avoid any future misunderstanding between the parties. For this reason, agreements will be written down and signed by representatives of the parties to the negotiations. The agreement should also have an implementation plan which shows when the activities agreed upon will be undertaken and by whom and the time frame.

6 Learning Activity 'Negotiation Role play' Ent-teach Unit 7 Exit Strategies, <http://s8cdfbf74db4f5e24.jimcontent.com/download/version/1371135129/module/8147227194/name/Learning%20Activity%20Unit%207%20-%201%20EN.pdf>

7 Jo Owen, "The Leadership Skills handbook: 50 key skills from 1000 leaders", 2007,

<https://books.google.co.zm/books?id=-TAXjGi7W0IC&pg=PA140&lpg=PA140&dq=negotiation+skills+handbook&source=bl&ots=VEUrYhoYUI&sig=p0FcjVhH6fzujad-4bxvsM6SXUfA&hl=en&sa=X&ved=0ahUKEwj13LKLuLPahXLuhoKHQY4AYgQ6AEIQTAG#v=onepage&q=negotiation%20skills%20handbook&f=false>



2.4 What happens if you fail to reach an agreement?

If the process of negotiation breaks down and an agreement cannot be reached, you should go back to the negotiating table to try again. You will be required to repeat the steps of the negotiations process. In the event that you still cannot reach an agreement, you may wish to consider other alternative solutions or bring in a third party to mediate.

2.5 Are there any instances when you should stop the negotiations?

There are times when you should stop the negotiations. There is no point to continue with negotiations when it is obvious you are not likely to get a good conclusion. In such situations, stand your ground and stop the negotiations.

Box 11: When should you stop to negotiate⁸

You should not continue with the negotiations when faced with any of the following situations:

- a) *If you're in a situation where you could lose everything, choose other options rather than negotiate*
- b) *When your counterpart asks for something you cannot support because it's illegal, unethical, or morally wrong (For example, either paying or accepting a bribe)*
- c) *When you're pressed for time, as you may make mistakes or give in too quickly*
- d) *When your counterpart shows signs of acting in bad faith and you can't trust their negotiating*
- e) *When waiting would improve your position*
- f) *When you are clearly not prepared*

8 Ground Rules for Meeting Conduct, <http://www.dds.ca.gov/ConsumerCorner/MakeComplexintoSimple/AdaptationSamplesMeetingRulespg9-16.pdf>



2.6 What Should You Do When You Are Being Threatened?

There are some negotiators who believe that the way to “win” a negotiation is by threatening the other party. There are a number of ways that some negotiators use to threaten the other parties into surrendering to their demands. As a negotiator, you must always be on guard to know when you are being threatened and act against the intimidation. The intimidator will try to take control of the negotiation and you need to find ways to fight back and stick to your ground. The first step to resisting threats is to recognize the most common intimidation tactics.

Box 12: Type of threats⁹

These are some of the threats that some negotiators may use:

- i. **Legal threats:** This may be the threat of a lawsuit or other legal action.
- ii. **Use of experts:** Experts have power due to their extensive knowledge of the topic area.
- iii. **Using threats:** Threats create hostility and tension.
- iv. **Status:** Some negotiators will use social class or status to try to affect the outcome of negotiations because people are apprehensive about negotiating with those who are more powerful, educated or wealthier.
- v. **Environmental or physical:** Using bad conditions such as lack of air conditioning (or heating) and uncomfortable seating arrangements
- vi. **Emotional:** Trying to intimidate by embarrassing or belittling the other party. Some people may yell and create a scene, making others uncomfortable.

⁹ Tag Archives: recognizing intimidation tactics in negotiation, <http://www.karrass.com/blog/tag/recognizing-intimidation-tactics-in-negotiation/>

When you are being threatened, you need to **respond correctly in order to stop the intimidator** from frightening you so that you can reach a favourable outcome.

Box 13: Dealing with threats¹⁰

When faced with threats you can take following actions:

- i. *Behave in the same way as the intimidator. Sometimes behaving in the same manner will change the attitudes and behaviour of the person that is trying to frighten you*
- ii. *Respond in the same manner as the intimidator. For example, if an intimidator makes a Final Offer that is a bit too high or low for you to accept, respond with your own Final Offer that will be a little too high or low for the intimidating negotiator to accept, with a statement that your offer is Final only so long as theirs is Final*
- iii. *Ignore the threats and continue negotiating as if there are no threats*
- iv. *If the negotiator that is trying to frighten you makes personal attacks on your character or that of your community simply tell them that an agreement is very likely to be reached, but only on the condition that they stop making any personal attacks.*
- v. *Warn the person that is threatening that your team will leave the negotiations and will not return until the threats stop. If the other side does not agree to stop the threats, leave the negotiations.*

2.7 Are there any factors that can affect the outcome of the negotiation?

The attitudes and behaviour of the people involved in the negotiations can affect the negotiations. Negotiations can be affected by the personalities of the negotiators or what the negotiators think about the people or issue involved. The way in which you relate to others, the manner in which you talk to them and your attitude towards the other party can influence whether the negotiations will be successful or not. To be an effective negotiator there are things that you should do and things that you should not do during the negotiations if your objective is to conclude the negotiations successfully.

Box 14

What you should do

- a) *Communicate your message in a clear and confident manner. You should speak with clarity of speech and with confidence.*
- b) *You should be attentive and listen to what the other party is saying. If you don't listen carefully to what they are saying, you will misunderstand them*
- c) *It is always important that you clearly understand what the other party is saying in the discussions. Where you have not understood what has been said, you should ask the other party to repeat what they said to avoid any misunderstanding.*
- d) *You must always show respect to all the parties involved in the negotiations.*
- e) *Be sensitive: You must be sensitive to other people's opinions, beliefs, ideas and feelings and responding in such a way as to avoid ill feeling or building a negative relationship.*
- f) *When tempers rise which they can in negotiations' you must work at reducing tension and creating a relaxed atmosphere. For example, adding humour to the discussions will assist in breaking the ice and create a more relaxed environment.*

What you should not do

- a) *Avoid sending negative signals by your facial expressions or signs shown through body language.*
- b) *Avoid getting angry, raising your voice or shouting at the other party. Getting angry will make you not think properly and say things that may kill the negotiations.*
- c) *Do not argue back when the other party is shouting at you or not showing you any respect, Rather than arguing back, give a calm response while at the same time not agreeing to meet their demands.*

¹⁰ How to Use & Defuse Hardball Tactics in Negotiating, <http://www.factoradr.com/docs/How%20To%20Use%20%26%20Defuse%20Hardball%20Bargaining%20Tactics.pdf>

2.8 What are the key elements for successful negotiations?

Negotiations are likely to be successful when the parties to the negotiations are open with each other and are committed to making sure that an agreement is reached and implemented. Agreements negotiated in good faith stand a good chance of succeeding.

Box 15: Key elements for successful negotiations

Accountability: Accountability means ensuring that leaders and officials in public, private and community sector are answerable for their action and that there are consequences when duties and commitments are not met (Transparency International). Community leaders must be answerable to the communities they represent, and the duty bearers (local authority and companies) must be answerable to the communities. Parties to the negotiations must be answerable for the commitments they make to each other in the agreement.

Transparency: Transparency is about helping citizens to understand 'rules, plans, processes and actions. It is knowing why, how, what, and how much. Transparency ensures that governments, head teachers, managers and businessmen act openly and reasonably and report on their activities (Transparency International). Those negotiating on behalf of the communities must make sure that community members are kept informed about what is happening in the negotiations and the key decisions that are made.

Community Ownership: Duty bearers (local authority and companies) should involve the communities in the design and implementation of development and Corporate Social Responsibility (CSR) projects. Development projects must be based on what the community want and must be community-led. Community leaders or those representing communities should ensure that the community participates in identifying their needs.

3. EXAMPLES OF GOOD AND BAD PRACTICES

Negotiations can either be successful or unsuccessful. There are a number of practices, both positive and negative, that we can learn from.

3.1 Examples of Success Stories

Box 16: Identifying impacted communities¹¹

A long history of experience in Nigeria in the oil and gas sector showed that the drawing of arbitrary lines between communities sometimes cutting across clan or ethnic boundaries could create conflict between beneficiary and non-beneficiary communities where there had previously been peace. The BTC project in Georgia decided on a distance of 2 km from its pipeline when it was deciding which villages should benefit from its Community Investment programme. However, this was modified to include communities further away if they were part of the same clan as villages within 2 km of the pipeline. This was a deliberate attempt to ensure that groups of villages remained cohesive and peaceful and to avoid conflict between the haves and the have-nots.

Box 17: Financial Benefit Sharing¹²

The Newmont Ahafo Mine Community Development Agreement in Ghana contains multiple types of financial benefit sharing. The agreement requires the mining company to pay to a community foundation US\$1 for every ounce of gold from the mine sold, as well as 1% of the company's net pre-tax income, and of any gains made in selling assets that total US\$100,000 or more.

Box 18: Encouraging social harmony within the workforce¹³

The Raglan Agreement emphasizes the importance of cultural sensitivity in employment as a key means of retaining Aboriginal employees. Specifically, the agreement seeks to encourage social harmony within the workforce by promoting inter-cultural understanding through cross-cultural training for all supervisors and managers, inviting local artists to perform outside of working hours at the project site, organizing sports events between employees and residents, and ensuring access to traditional food sources.

Box 19: Promoting local business development¹⁴

The Argyle Diamond Mine Participation Agreement: Management Plan Agreement demonstrates how CDAs can facilitate the company to help local businesses develop. In it, the company commits to helping traditional owners establish businesses and develop good management practices, and where appropriate, an Argyle employee would help the business on an ongoing basis for three years.

Box 20: Infrastructure development and service provision¹⁵

The Agreement between Newmont Ahafo Development Foundation and Newmont Ghana Gold Ltd is an example of a company seeking to foster greater community participation and public ownership of the project and associated benefits. The agreement provided that infrastructure projects completed were jointly owned by the community and the District Assembly, and allocated to them the responsibility for their maintenance and management. Where personnel or other resources would be required, the District Assembly agreed to liaise with the local government agency. The agreement does not specify other means of obtaining financial or other resources if the government agency is unable to assist. It also does not require the company to assist in the development of a maintenance and management plan for the project. Instead, the process under which these projects would be developed includes the involvement of the newly created Ahafo Development Foundation, which is run by a board of trustees and composed of company and community representatives. The Foundation is established under a related social responsibility agreement, and its role is to consider proposals from District Assemblies for sustainable development projects and fund those it approves. The agreement set out that the Foundation would receive revenue from the project, which could be applied towards programs for developing infrastructure and delivering other services. In this example, the Foundation acted as an intermediary body, limiting Newmont's financial and managerial responsibility for infrastructure and service provision.

A different arrangement was established by the Memorandum of Agreement relating to the Development of the Porgera Gold Mine Project in Papua New Guinea, which required the joint venture company to ensure the supply of electricity to individual houses in existing and future resettled residential settlements of families whose resettlement was linked to the grant of mining concessions. No end date was specified for this obligation, although the electricity can be subject to the usual charges by the electricity supplier.

¹¹Environmental Resources Management, "Mining Community Development Agreements – Practical Experiences and Field Studies", The World Bank, 2010 <http://www.sdsg.org/wp-content/uploads/2011/06/CDA-Report-FINAL.pdf>

¹² Jennifer Loutit, Jacqueline Mandelbaum and Sam Szoke-Burke, "Emerging Practices in Community Development Agreements", Columbia Centre on Sustainable Investment, Columbia University, 2016

<http://ccsi.columbia.edu/files/2016/02/Emerging-practices-in-CDAs-Feb-2016-sml.pdf>

¹³ibid

¹⁴ ibid

¹⁵ Jennifer Loutit, Jacqueline Mandelbaum and Sam Szoke-Burke, "Emerging Practices in Community Development Agreements", Columbia Centre on Sustainable Investment, Columbia University, 2016

<http://ccsi.columbia.edu/files/2016/02/Emerging-practices-in-CDAs-Feb-2016-sml.pdf>

Box 21: Mining Closure¹⁵

The Tolukuma Gold Mining Project Agreement states clearly how the community will be engaged in relation to mine closure and rehabilitation. The Papua New Guinean national government will create a task force three years prior to the closure, and require that a Conceptual Mine Closure Plan be circulated for comment by key stakeholders to ensure rehabilitation of the project area and sustainability of the local communities.

The Agreement between Newmont Ahafo Development Foundation and Newmont Ghana Gold Ltd provides that the company and the community will work together to identify and develop programs for the closure and reclamation of the mine. The agreement includes a closure plan, to be administered by a mine closure panel, which is made up of stakeholders in the community and company. The company will also assist in capacity building and training for those members of the community who will participate in the closure and reclamation programs

Box 22: Local employment and skills training¹⁶

The Diavik Diamonds Project Socio-Economic Monitoring Agreement provides for employment and training benefits that increase the stake and role of members of Aboriginal communities in the mine's operation. The agreement places a strong focus on recruiting, training and retaining its employees. This includes prescribing a workforce quota for members of local Aboriginal communities using a cumulative percentage goal at various stages of the project. However, there is no penalty that applies if it does not meet its recruitment goals. The agreement also actively promotes and encourages careers in diamond mining for the youth of the region where the mine is located, although again this is left at the discretion of the company, and no details are provided in the agreement. In addition, the agreement establishes a number of training programs all geared towards increasing access to jobs for members of Aboriginal communities and equipping them with transferable and project-related skills.

Box 23: Social responsibility¹⁷

As part of a commitment to economic and social development of impacted communities, Newmont has developed formal agreements with local communities covering the broad roles and responsibilities of different stakeholders, the specific detail surrounding employment and job creation, and the terms of the development of the Newmont Ahafo Development Foundation (NADeF). The Ahafo CDAs took approximately three years to develop and involved the signatories of Newmont Ghana, local traditional leaders from at least ten villages. As a precursor to the commencement of CDA negotiations, Newmont practiced a period of stakeholder engagement and capacity building aimed at disseminating information about Newmont, the aims of the forum and negotiations, and improving technical skills in topics such as land ownership legislation and negotiating techniques.

Box 24: Transparency¹⁸

In certain countries, such as Peru, Colombia, and Papua New Guinea, it is stipulated that some part of taxes and/or royalties generated by a mining company must be redistributed at a local level. In other countries, including Guinea, state mining contracts and agreements, specify the amount, and how funds should be transferred to impacted communities. Where these payments are made directly to federal or central governments, this is often an attempt to ensure the transparency of community development initiatives.

Box 25: Gender inclusion¹⁹

Papua New Guinea has a long and difficult track record of tensions over mining projects. The negotiation of agreements with locals affected by Ok Tedi mine in 2006 and 2007 may offer lessons about how marginalized sectors of society can be integrated into the bargaining process. Against the background of protracted disputes and extensive damage to the local environment, the operator of the Ok Tedi mine decided to invest significant resources in the negotiation of community mine continuation agreements with elected representatives of the 156 villages affected by the project. Independent international and local facilitators selected by both parties, facilitated the negotiations, and free and independent legal, environmental and accounting advice was provided to the local community negotiators. Additionally, a former chief justice of the supreme court was engaged as an independent observer of the process, which lasted for 18 months at a cost of \$3.4 million, covered by the mining company. The local representatives initially comprised only men. But the company representatives and the independent observers eventually managed to convince community leaders to include women formally in the negotiation process and to allow one female representative to take part in the top-level negotiations. The impact was substantial. Women would be represented on all relevant governance committees for the agreement, half the educational scholarships would be awarded to women and girls, cash compensations were made to family bank accounts (rather than to male clan leaders) and 10 per cent of the compensation payments would be directly administered by groups of women. The agreements were widely perceived as a success by community and company representatives and by independent observers.

16 ibid

17 ibid

18 World Bank, "Mining Community Development Agreements Source Book", 2012
http://siteresources.worldbank.org/INTOGMC/Resources/mining_community.pdf

19 ibid

3.2 Examples of Unsuccessful Stories

Box 26: Conflicts of interest²⁰

While there are multiple cases where CDAs have been encouraged by governmental and non-governmental actors, the reverse is also true. There are cases where governments have actually discouraged companies from carrying out consultation and community development due to a conflict of interest between local communities and other levels of government. In some cases, companies have been more willing to engage with communities than with regional and national governments. Such conflicts of interest tend to be of political and economic nature, based on the perceived benefits that the engagement with certain communities may have on regional or national issues. In extreme cases, existing tensions have been exacerbated by the development of mines and the perceived benefits of such development to different actors. For example, the Grasberg mine in Indonesia was developed in a culturally diverse and divisive area. While local people were hostile to the project, a government sponsored Internal Transmigration Program brought Javanese workers (from outside the region) to live and work in the mine rather than local residents. The agreement between the government and the company led to the perception that the majority of project benefits were going to the trans migrants and not the local communities. This situation led to civil unrest and loss of life.

Box 27: Remote location²¹

In Papua New Guinea, many of the most significant mining operations are located in remote areas where government services suffer from reduced resourcing and capacity. These conditions weaken the framework for a CDA and ultimately mean that without the skills and expertise to provide the supporting services, a CDA may fail to provide sustainable benefits.

²⁰ Paul Stevens, Jaakko Kooroshy, Glada Lahn and Bernice Lee, "Conflict and Coexistence in the Extractive Industries", A Chatham House Report https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy,%20Environment%20and%20Development/chr_coc1113.pdf

²¹ Environmental Resources Management, "Mining Community Development Agreements – Practical Experiences and Field Studies", The World Bank, 2010 <http://www.sdsg.org/wp-content/uploads/2011/06/CDA-Report-FINAL.pdf>

4. CONCLUSION

Negotiations are about reaching an agreement that makes both parties to the negotiations happy. For a negotiation to succeed both parties must walk away with a sense feeling that their needs or at least some of their needs have been met. A good negotiator will always work with the other party in searching for a win-win solution to bring the parties together. You must see the other party in the negotiation as partner in development and not as an enemy. Remember it also in their interest to have a negotiated solution that is beneficial to all.

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