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land access   resettlement   consultation   social impact   livelihoods

# Negotiating Land Access and Resettlement Agreements:

*Lessons from Intersocial's International  
Experience and Benchmarking Studies*

IAIA Resettlement and Livelihoods Symposium

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**Presenter: Mike Steyn** ([mikesteyn@intersocialconsulting.com](mailto:mikesteyn@intersocialconsulting.com))

# Intersocial Experience and Benchmarking Studies



- ❑ Our team has worked on over 50 projects for more than 40 clients, in over 30 countries across Africa, Eurasia, the Americas and Asia Pacific
- ❑ **Major benchmarking study carried out in 3 phases from 2012 to 2014**  
- Funded by Rio Tinto, Gold Fields and Glencore
- ❑ Reviewed land access and resettlement relating to **42 mining, oil & gas and other projects in 20 countries** (projects participated anonymously)
- ❑ Results presented at ICMM in March 2014
- ❑ Intersocial has also been commissioned to undertake country and client specific benchmarking exercises of land access and resettlement
- ❑ **Presentation draws on the results of our experience and these studies**

## Important Questions

1. Are projects negotiating enough with project affected people on land access and resettlement versus merely consulting?
2. How are projects structuring engagement? What works best?
3. Are projects adequately preparing for negotiations?
4. Is practice improving?
5. What are the key lessons?

## Q 1 - Are Projects Negotiating Enough?

➤ **Answer = In a number of instances NO**

### **Examples**

- ✘ Failure to engage with all relevant stakeholders
- ✘ Concluding agreements with community leaders who are not fully representative
- ✘ Agreements reached are not always sufficiently comprehensive – Topics like loss of livelihoods, vulnerable persons, tenants, social disarticulation, security of tenure, broader community development, benefit sharing and eligibility criteria not always adequately addressed
- ✘ Lack of informed agreement by affected communities, which creates problems when it comes to implementation
- ✘ Some projects still take the view that, because they ultimately can obtain expropriation, they do not really need to negotiate

## Q 2 - How are Projects Structuring Engagement? What Works Best?

➤ **Basic options** are:

- **Only individual negotiations with each household**

OR

- **Group level negotiations on certain topics, followed by individual household negotiations on other topics** (within the limited parameters of the group level agreement)

OR

- **Group level negotiations on all packages, followed by individual household sign-off** (not negotiation, but recording of choices from the range of group level pre-agreed packages) on packages/ choices available, in accordance with the group level agreement



- **Projects use different structures**, either because it suits their circumstances or because they have not given enough thought as to what would work best
  
- **There is no one ideal structure to use** - Each project must consider its own circumstances carefully and tailor the process to its requirements
  
- **There should be good reasons why not to have group discussions** - Unless good reasons to contrary, we typically propose a dual level structure:
  - **Group level discussions** – Negotiate framework of objectives, principles, standard compensation rates, livelihoods programs, other measures, implementation, and M&E
  
  - **Individual household level discussions** based on types of displacement impacts. Discussions take place within framework of group level agreements. For some topics there might be no negotiations, but merely choosing from range of options agreed at group level e.g. livelihoods program choices

- **Issue** - Some projects conduct negotiations in a piecemeal fashion, using lawyers to first try and purchase land as a purely compensation oriented commercial transaction, and then using their community relations staff to discuss resettlement issues like livelihoods restoration
- **Total Value Proposition or Disaggregated Discussions?** - Should discussions related to compensation for land, trees, crops and other affected assets take place separately from other topics, or should all the topics be discussed as part of a comprehensive package/ total value proposition?
- **Package Negotiations** - We typically recommend that all topics are discussed as part of a comprehensive package in order to ensure that all displacement impacts and issues are addressed in a manner that meets best practice standards and enables comprehensive offers to be made and considered and agreements reached



## Setting the Scene

- **A number of projects have launched straight into substantive discussions, without first 'Setting the Scene'. It is important to first set the scene as follows:**
  - ☞ **Thorough Pre-Displacement Community Baseline and Assessment of Displacement Impacts**
  - ☞ **Initial Overview of Topics** that Need to be Discussed
  - ☞ Determine the **Negotiation Forum/s and their Purpose, Structure and Membership**
  - ☞ **Capacity Building for Participants**, including:
    - ☞ Overview of Applicable Laws and Standards
    - ☞ Discuss Concept of Project Having a Limited Budget (including what it takes to build a project)

## Setting the Scene



- ☞ Agree on clear **Negotiation Agenda and Timeline**
- ☞ Clarification of key **Terms and Definitions**
- ☞ Agree on **Negotiation Objectives and Guiding Principles**
- ☞ Agree on **Negotiation Rules and Procedures**
- ☞ Agree on **What Constitutes Success**

## Ways to Structure Group Level Negotiations

In order to effectively structure group negotiations there are a number of structures that some projects have effectively used:

- **Resettlement Committee** – Group forum of representatives of parties, where agreements are negotiated
- **Sub-Committees** – If scope of agenda and project circumstances warrant it, one can make use of sub-committees of main committee to investigate and discuss certain specific issues, before bringing them back to main committee for final deliberations
- **Resettlement Steering Committee or Advisory Group**



## Q 3 - Are Projects Adequately Preparing for Negotiations?

➤ Answer = **In many instances NO**

### **Examples**

- ☒ Undertaking negotiations without an adequate strategy and plan (unclear packages, negotiating positions and tactics)
- ☒ Being unrealistic about the time and resources required for negotiations
- ☒ Management not fully appreciating the challenges of and the business case for doing negotiations thoroughly
- ☒ Unprepared negotiating teams who still need capacity building
- ☒ Inadequate information sharing with participants and other key stakeholders
- ☒ Unclear mandates and uncostered proposals

## Key Planning Steps and Tools

- ✓ Thorough **Pre-Displacement Community Baseline** and **Displacement Impact Assessment**
- ✓ Tailored **Stakeholder Identification and Analysis**
- ✓ Develop **Negotiation Scenarios**
- ✓ Tailored **Risk and Opportunity Assessment**
- ✓ Determine and prioritise project **Negotiation Objectives and Guiding Principles** and anticipate objectives of other parties
- ✓ Develop an internal confidential **Negotiation Plan** (separate from RAP)

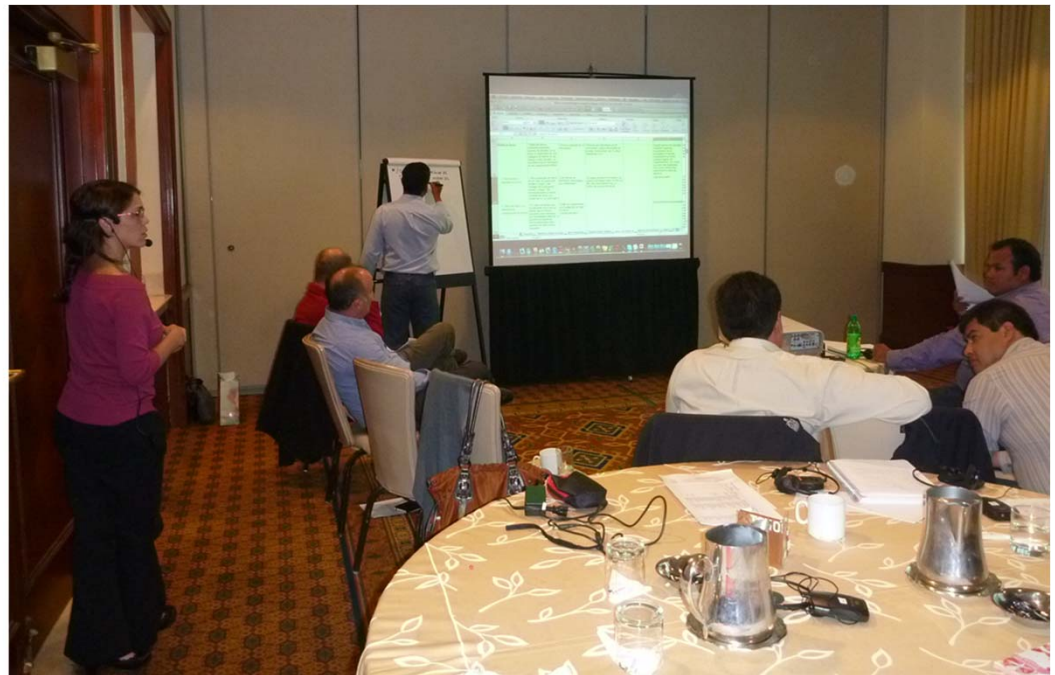


## Key Planning Steps and Tools

- ✓ Develop **Work Plan and Schedule** (integrated with overall project)
- ✓ Prepare **Project Negotiation Team and management**
- ✓ **Create the right atmosphere** – Set Scene for substantive negotiations
- ✓ **Ensure people are truly representative** of communities
- ✓ **Grievance Mechanism**
- ✓ **Negotiation Dispute Resolution Procedure**
- ✓ Suitable **mechanisms to record** engagement and agreements

## Key Planning Steps and Tools

- ✓ Create the **appropriate negotiation forum**
- ✓ **Capacity building** (for all parties)
- ✓ Prepare tailored **presentation materials**
- ✓ Prepare a list of anticipated **key questions and answers**
- ✓ Undertake internal **'strategic planning and dry run' workshops** to ensure negotiating team is ready and that there is internal alignment



## Key Planning Steps and Tools

- ✓ Make necessary **administrative arrangements** e.g. venue, transport, refreshments, audio-visual equipment
- ✓ Put in place clear **feedback loops** internally and to affected communities and other relevant stakeholders



Many of these steps seem obvious, **but there are still projects where they are not all being undertaken/ used**







## Q 4 - Is Practice Improving?

- ❖ **Many projects do not fully negotiate land access and resettlement to the extent possible and appropriate**, despite there being a clear business logic for doing so
- ❖ **However, is practice improving? – YES**
- ❖ **There are projects that are using effective and innovative processes to engage with communities and other stakeholders**
- ❖ **But, there is still significant scope for improvement**



## Q 5 - What are the Key Lessons?

-  Even where expropriation is theoretically available, **many projects really have little choice but to negotiate with affected communities, even if they still formally call the process consultation**
-  **Start early – you will need the time** - Projects are often not giving themselves enough time to properly plan for and undertake engagement with communities on resettlement
-  **Those projects that have undertaken a process of real and thorough negotiation have been the ones that undertook the most effective process of land access and resettlement**
-  No negotiations should be undertaken without first developing **explicit overall objectives and guiding principles**, and a **comprehensive negotiation strategy and plan**

## Lessons Learned

📖 Offer nothing during negotiations without it first being **fully costed and approved** by management

📖 **Do not negotiate in a piecemeal manner**







📖 **Help communities prepare** before negotiations commence

📖 **Ensure leaders/ representatives are truly representative**








📖 **Listen** (Put yourself in the shoes of project affected people)

📖 **Go where you have to to engage people**

📖 **Manage expectations**

-  **Do not just give, be seen to negotiate** – get something in return
-  The negotiation process must result in a **Win/ Win situation in order to ensure implementable and sustainable agreements**
-  Negotiated packages must be **fair and transparent**
-  **Prepare for unfavourable attention**
-  **Process is as important as outcome**
-  Project negotiators should **remain open to counter-offers and alternative solutions** – it is impossible to fully build communities' confidence and support if they believe that outcomes are pre-determined

## Lessons Learned

-  **Whatever the project initially offers, communities will always feel that it has more to offer**
-  **People respect firm instead of weak negotiators, but they expect to be treated fairly - A deal is made not won**
-  **Make sure you have the right team** - Land access and resettlement negotiations are not for the faint hearted, inexperienced or unprepared
-  **Be realistic about how long negotiations will take**
-  **Plan thoroughly but be flexible when necessary**
-  **Each project has different circumstances and the process needs to be tailored accordingly, but that is not an excuse to cut corners**
-  **Avoid setting unaffordable precedents**

# The Next Step to Help Advance Best Practice

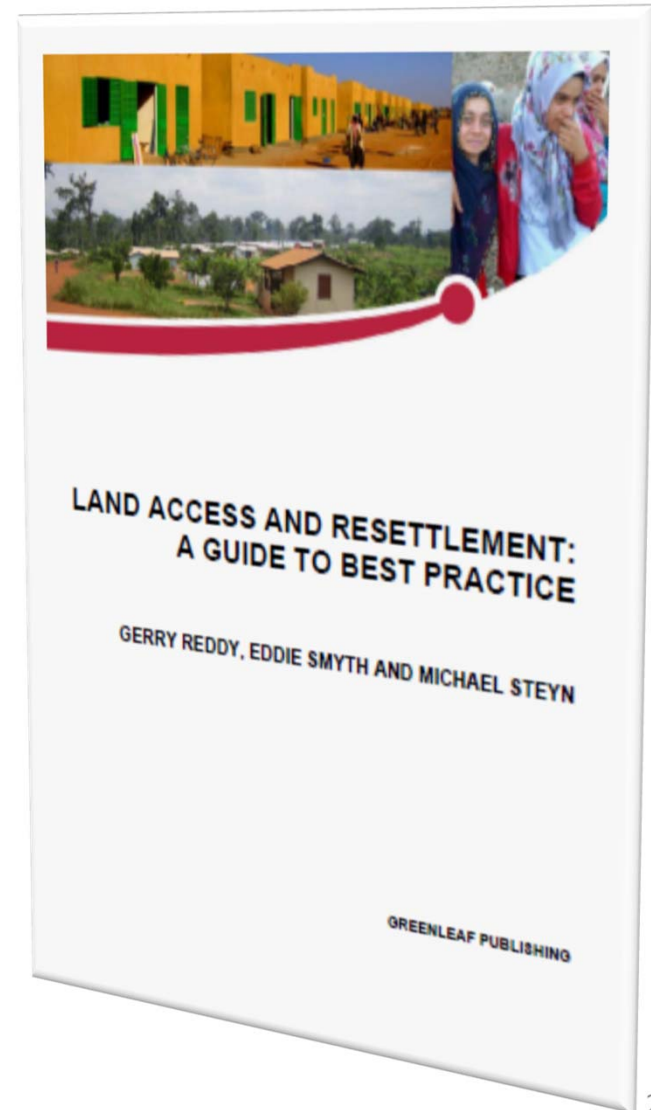


## Land Access and Resettlement *A Guide to Best Practice*

Gerry Reddy, Eddie Smyth & Michael Steyn

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[www.greenleafpublishing.com](http://www.greenleafpublishing.com)*



# Question Time

