RENEGOTIATING A PNG COMPENSATION AGREEMENT: APPLYING AN INFORMED CONSENSUS APPROACH

Barbara Sharp & Tim Offor
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Cover page photo: Women from Serkei village in the South Fly floodplain gather after a village meeting at the beginning of the Ok Tedi CMCA review negotiation process. (Photographer: Barbara Sharp)
Renegotiating a PNG Compensation Agreement: Applying an Informed Consensus Approach

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Abstract

This paper describes a multi-stakeholder negotiation over compensation at the Ok Tedi copper mine, Papua New Guinea (PNG). It details the Informed Consensus process used to respond to the high levels of distrust and diversity of interests in the negotiations and explains how a sustainable development focused outcome was agreed. It shows how a carefully built, culturally appropriate process is able to provide a 'safe', 'free' environment for diverse parties to an agreement, allowing all 'voices' to be heard and how genuine ownership of outcomes can be achieved.

The Ok Tedi Informed Consensus process was underpinned by guiding principles and used particular 'independence devices' adapted to support a range of public dialogues applicable to smaller-scale negotiation processes. While the context for these negotiations was PNG, the approach and learnings are directly applicable to many communities – indigenous and non-indigenous – negotiating complex, enduring agreements. The paper describes the context in which the process was designed and operated, how the process worked, the theoretical underpinnings that it drew on, the financial and sustainable development focused outcome, and the key learnings from such a large and complex task.
Acknowledgements

A project as large as the CMCA Review depended on the contributions of many people for its success. Special mention must be made for the contributions of the leaders throughout the impacted communities who gave up a large amount of time to represent the interests of their people at the working group and through the many side meetings and village patrols. We particularly acknowledge: the then Managing Director of OTML, Keith Faulkner, without whose support and trust the process would never have been contemplated; David Masani for his counsel and good humour; Leonard Lagisa and the whole of the OTML community relations team who worked tirelessly to keep the whole process moving forward and spent many months in the field supporting the village meetings; Musje Werror and the team from the Ok Tedi Development Foundation who so strongly supported the process while continuing to service the needs of the communities; representatives of parties and interest groups who contributed to the discussions and who influenced the outcomes, including the PNGSDP; the national government of PNG; Ume Waineti of the PNG National Council of Women; Mathilda Koma from PNG Environment Watch Group; Blasius Iwik from the Catholic Church; Peter Adler, Caelan McGee and Janesse Brewer of the Keystone Centre; Martin Brash and the excellent team of facilitators from Tanorama who made Tabubil their second home; James Kruse from Deloittes; Special Advisor Sir Arnold Amet; and Independent Observers John Kawi and Dr Beno Boeha. We thank also the current Managing Director, Alan Breen, who inherited a potentially daunting agreement and has embraced the implementation challenge.

Acronyms

<table>
<thead>
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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ARD</td>
<td>Acid Rock Drainage</td>
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<tr>
<td>CMCA</td>
<td>Community Mine Continuation Agreement</td>
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<tr>
<td>FPIC</td>
<td>Free Prior Informed Consent</td>
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<tr>
<td>HERA</td>
<td>Human Health and Ecological Risk Assessment</td>
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<tr>
<td>OTML</td>
<td>Ok Tedi Mining Limited</td>
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<tr>
<td>PNGSDP</td>
<td>Papua New Guinea Sustainable Development Program</td>
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<tr>
<td>UNMDG</td>
<td>United Nations Millennium Development Goals</td>
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Background

The Ok Tedi mine is a copper and gold mine that began operating 26 years ago in the Star Mountains of PNG. It is well known for its environmental damage to the Fly River system, and for a number of high-profile legal actions taken against its former majority shareholder and operator, BHP Billiton. The mine’s riverine tailings disposal method has resulted in significant environmental impacts on the river system, and on the livelihoods of the more than 95,000 people living downriver from the mine.

In 2001, the operating company, Ok Tedi Mining Limited (OTML), negotiated agreements with these downriver communities, called Community Mine Continuation Agreements (CMCAs) (Wanbelistap 2006a). These agreements sought the communities’ consent for the mine to continue, even given the known impact of the mine on their environment. They were signed by representatives of 146 villages, with nine villages involved with a lawsuit against the company, refusing to sign. OTML told villagers that, if the impacted communities wanted the mine to keep operating, knowing the impact of the mine’s operations on their river, then they would have to agree to that formally. In return, the mining company would pay them for the losses suffered due to the environmental impacts.

For the purposes of the initial negotiations, and in recognition of the different regional impacts, the communities were divided into nine geographic regions from the mine lease area in the north to the mouth of the Fly River, some 800 river km south. Separate agreements were negotiated with each region and the level of compensation was roughly proportional to the level of environmental impact. The South Fly region received no cash compensation, but did receive funding for development projects.

The CMCAs were considered controversial as they were enshrined in PNG legislation and provided the company and shareholders with releases from future litigation. The agreements were effective until 2010 which was the predicted life of the pit mine at the time of signing. The terms of the CMCAs allowed for a review of their operation after five years (the midterm review). They also provided for a review of the compensation payments if impacts exceeded those initially predicted.

In the years leading up to the midterm review, OTML had advised the communities that there was evidence of increased environmental impacts and proposed that any renegotiation of compensation arrangements be combined with the midterm review. In light of this, the review assumed increased importance as the five years approached. It was clear by 2005 that the review needed to be a thorough and robust discussion about the continuation of the ‘social licence to operate’, implied by the signing of the original agreements.

This ‘New Way Forward’ CMCA Review began in February 2006 and was completed in June 2007. What follows is a description of the environmental, social, economic and operational contexts to the negotiation of the CMCA review.
The environmental context

The Ok Tedi mining company discharges waste rock and mill tailings into the local river system, of which the Ok Tedi river is the most affected waterway. Consequently, the Ok Tedi River has been severely degraded and sediment impacts now extend hundreds of kilometres downstream into the Fly River. Within 15 years of mining, the accumulation of sediment in the river system caused overbank flooding and associated dieback of vegetation spanning some 1000 km$^2$ of floodplain.

About 20 years after mining began, further environmental impacts were being found. Acid Rock Drainage (ARD) was emerging as an additional impact in the river system, threatening to release levels of soluble metals sufficient to cause toxicity to aquatic life (OTML 2006a). And the mine plan for the remaining seven years of mine life predicted a threefold increase in the acid-generating potential of the mine waste due to increased sulphur in the ore body.

The river was under stress, and unless an engineering intervention was put in place to mitigate these impacts at source, or the mine was closed, the mine's waste could effectively kill the river.

The social and economic context

More than 95 000 people now live along the Ok Tedi and Fly rivers (OTML 2007). Their largely subsistence lives depend on staple foods found in the river and traditional gardens on the floodplains. The people along the river knew, without the mining company's scientific data, that fish yields were down, gardens were flooded for longer and sago harvests could no longer feed as many people. Women, the primary generators of economic production in PNG, were reporting back pain from lugging food crops as they had to travel further to reach their gardens because of the flooding.

Currently, the Ok Tedi mine contributes almost 25 per cent of PNG's export revenue, representing about 15 per cent of Gross Domestic Product. In 2007, regional and national government taxes, royalties and dividend payments came to K1.5 billion. In the Western Province region, OTML is by far largest contributor to the economy and forestry is the only other significant non-government macro-economic activity.$^2$

Without this income, and the taxes and royalties paid by other resource projects, people would not be able to improve their health and education standards, nor realise their aspirations for development. Governance in the province is weak, and it is arguably made weaker by the

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1 ‘Ok’ means river in the local Min language.
2 A socio-economic report commissioned by OTML found that the mining industry is "probably contributing two-thirds of all cash income in the Province" (OTML 2006b).
mine filling the breach. In addition, Transparency International ranked PNG as 162 on its list of 180 nations in its 2007 Corruption Perceptions Index, compared to Australia which is ranked 11 (TI 2007). This dependence on the Ok Tedi mine was brought into sharp relief when in 1998 a Human Health and Ecological Risk Assessment (HERA) conducted by the mining company found that the best waste management option, of the four examined, to determine the best technically and economically feasible response to the environmental impacts was immediate closure of the mine.

The closure option, favoured by majority shareholder BHP, alarmed the communities and the PNG Government who had come to depend on the mine’s income. In response to this alarm, and in search of the support it needed to either continue or cease operations, OTML sought agreement from the downriver communities to continue mining and, in return, compensate them for the mine’s environmental impacts. The resultant Community Mine Continuation Agreements provided compensation to the landowners in the form of cash and development projects, such as schools and housing, and equipment for small businesses, such as sewing machines and rice mills.

Over time however, village leaders and the company became increasing aware that compensation payments had mostly been squandered with little to no investment made for their social and economic future. Leaders were conscious of the need to foster economic independence from the mine’s income and benefits with the mine closure scheduled for 2013.

The Ok Tedi mining project and the agreements reached with the communities represent a classic developing world dilemma: what environmental price does a nation’s people have to pay to live longer lives and realise their development aspirations? In the microcosm, how can the wealth generated from mining resource projects be applied to directly benefit the people whose lives are inexorably changed, either by physical or social impact, or both?

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3 The Fly River Provincial Government is said not to be able to comply with “the detailed and transparent framework of the Organic Law on Provincial and Local Level Government” (OTML 2006b). This includes suspension on two occasions by the national government for financial mismanagement. This is despite the availability of high levels of development funds in the province through the PNGSDP and Tax Credit Scheme funds through mining companies directing taxable income to development projects. Ibid p. 48. One former governor has also served a jail sentence for misappropriation of public funds. Further, a World Vision report (2006) measuring progress of 22 of Australia’s ‘neighbours’ towards the United Nations Millennium Development Goals (UNMDG), found PNG was “unlikely to achieve” all eight UNMDG goals.

4 OTML’s shareholders at this stage were: BHP 52 per cent; PNG National Government 30 per cent and Inmet Mining 18 per cent. The PNG Government may not have agreed to closure either as a shareholder or as sovereign government. Such a decision would require all shareholders to agree.

5 A World Bank review of the HERA for the PNG Government found “immediate closure would appear to carry with it the worst social impact”, even if it had the best environmental impact (Letter from Klaus Rohland, World Bank Country Director, PNG East Asia and Pacific region to Sir Mekere Morauta, 20 January 2000).
The leaders of villages affected by the mine also had a personal dilemma: they had no choice but to trust the mining company that had put their livelihoods under so much stress, because the record of poor governance had meant that OTML was possibly the only organisation with the power and the will to find a way through and provide for the future of their people.

The vexed relationship between the mining company and the communities had played out most prominently in the series of legal actions taken on behalf of landowners against the Ok Tedi mining company and its previous majority shareholder BHP (now BHPBilliton). The litigation had been unsuccessful on a number of criteria, most significant of which was its failure to satisfy the communities' need and desire for sustainable development.

The first legal action was settled out of court and resulted in K150 million largely going to the clan leaders in the Lower Ok Tedi and Middle Fly regions. Subsequent class actions in the Victorian Supreme Court in Australia were launched and ultimately withdrawn by the plaintiffs, as was a constitutional reference in the Supreme Court of PNG. The communities did not receive any payout from this action.

With this history, the midterm review of the CMCAs became a focal point for airing grievances, concerns, aspirations and demands from the many people with a stake in the Ok Tedi mine and its place in a developing nation. While the communities suffering the environmental impacts were the main players in the midterm review, in the developed world were non-government organisations and church groups advocating on the communities' behalf. These advocates placed accountability squarely at the feet of BHP. There are grounds for seeing a strong link between this pressure and the decision by BHP and its then newly merged owner, Billiton plc, to negotiate with the PNG government to 'gift' its majority shareholding to a charitable trust, PNG Sustainable Development Program (PNGSDP) with a charter for sustainable development in PNG and Western Province. BHPBilliton later publicly stated that it would no longer consider investing in new projects using riverine tailings disposal (BHPBilliton 2001: 26).

The withdrawal of BHP from the project was like a shift in the axis of the company. The most enduring change was that the majority shareholding effectively transferred to the people of PNG and those living along the impact corridor. Fifty-two per cent of the shareholding was transferred to the PNGSDP and when combined with the 30 per cent share held by the PNG government, meant that 82 per cent of dividends from OTML were distributed for the benefit of the people of PNG and withdrawal from the project. The downriver communities were now beneficiaries of the mine that was polluting their river.

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6 BHP’s 52 per cent majority shareholding was transferred to the PNGSDP. This transfer and the exit of BHP from the Ok Tedi project were enacted through the Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act, 2001.
The mine's operating company OTML, however, had always operated the mine under local conditions, responding to the issues as they affected a mine operating in a remote community, rather than with an eye to its international reputation. The opprobrium being played out in the international media and justice system was a major reputation issue for BHPBilliton, but was a far more practical issue for the operating company, OTML, which was more focused on maintaining a stable operating environment.

The township of Tabubil hosts the mining company headquarters and is characterised as an open town, without fencing or segregation of mining employees and the local community. About 95 per cent of the company's 2000-strong workforce comprises PNG nationals. In addition, approximately 1600 people are employed by local landowner companies providing services to the mine. OTML's relationship with its host communities is critical to the success or failure of the company's operations. Over 26 years of mining, this relationship has largely been trouble free, and there has been an ongoing desire to resist segregating local community from company operations as has happened in other mining operations in PNG and neighbouring Indonesia.

Negotiating with the downriver communities was an extension of the company's practical need to manage the terms of their social licence to operate. To this end, OTML had as its goal in setting up the CMCA review:

To establish a framework within which OTML and the affected communities can successfully discuss issues of mutual interest relating to the CMCA’s, and effectively agree on an appropriate balance between the mine’s social and economic benefits, and the environmental impacts on their way of life (OTML 2006c).

The relationship between OTML, the communities and the PNG nation has always been symbiotic, and as such, pivotal to the success of the mining operations. The company's relationship with the stakeholders, though, is perennially on a knife edge.

The negotiation context

By 2005, four years after the CMCA’s were signed, litigation had failed to deliver for the litigating villages, greater environmental damage was confirmed and the mining company was struggling to deliver on its commitment to provide for the development projects nominated by the communities. While international interest and advocacy had receded once BHPBilliton withdrew from the project, the affected communities were between a rock and a hard place. They wanted, and now needed, the wealth of the mine to draw them out of poverty and compensate them for a future of extended inundation of gardens and possible denudation of protein supplies from the river.

The civil society organisations that had been so vocal while BHP was involved were pursuing other causes, and the government was seen by many to be failing its people through levels of corruption and poor social infrastructure provision right across the country. Some community leaders expressed that they had little choice but to put their fate in the hands of the company that was responsible for the dilemma they faced.
The mining company had its own demons. Data on the ARD impacts indicated the seriousness of the existing level of stress experienced in the river and the potential threat to the life of the river with continued mining. OTML knew they could not conscionably continue mining without a major commitment to environmental mitigation and the support from the affected communities for continued mining (Faulkner 2005).

The operational context

The review of CMCAs was not primarily a legal process as the legal agreements and legislative framework were already in place. It was a review of the operation of a contract with additional discussion on levels of compensation required given the increased environmental impacts (the ARD). But the swirl of social and economic dependence on the mine at a local and national level and the natural desire and need for development meant that a review of the contract was an obvious opportunity for all participants to finally and specifically convert the now burgeoning wealth of the mine into a force for change to redress these issues.

On a practical level, and to a greater or lesser extent, the review needed to respond to the following challenges:

• Communication: while English was the preferred language for communicating across the expanse of the province, the communities generally had English as their third language and only about 67 per cent of people were literate⁷. There was limited access to newspapers and radio coverage, so printed materials had to be distributed by hand (via village patrols, needing a boat, helicopter or walking into villages) and then translated verbally into Tok Pisin, Motu, Hiri Motu (common pidgin languages) or other Tok Ples (local languages, of which there are around 800 in PNG).

• Geography: the majority of the affected people living along the Fly and Ok Tedi rivers were dispersed over some 800 km, with some villages only accessible by dinghy and then on foot or by helicopter. Consequently, a single round of village meetings took six to eight weeks using five concurrent field teams.

• Participation of women: women suffer low status in PNG yet they are the major producers of economic wealth and the key to future prosperity through raising children. While OTML encouraged villagers to consider women in their choice of representatives, only one woman was chosen as a village representative out of 152 participating villages.

• Community leadership: communities in some instances distrusted their own leaders. In some instances, development and compensation funds diverted by leaders did not reach village level, so democratic selection of good village leaders to participate in the review was essential.

• Governance: weak institutional capacity, corruption and isolation meant that Western Province villagers have seen little of the wealth generated by the Ok Tedi mining project and were skeptical of things improving. OTML needed to avoid becoming a de facto government through the process.

⁷ 1990 population census indicated 72 per cent of males and 60 per cent of females who were over the age of ten were literate (OTML 2006b: 23-24).
Complex technical information: data on environmental impacts – actual and predicted – were technical and complex, and it remains difficult to ascertain community comprehension of them and be entirely confident that a technical Free Prior Informed Consent was achieved.

Environmental mitigation: a K450 million (A$160 million) Mine Waste Tailings Project was undertaken in parallel with the negotiations to mitigate further environmental damage from ARD and copper. Providing communities directly affected by this project consented to the necessary infrastructure works, environmental mitigation was considered a given by the company and was not put up for negotiation during the CMCA review.

The downstream river communities and the company needed a way of negotiating terms and compensation amidst these challenges that would be robust and result in an enduring positive legacy of the mine for those directly affected by it. The environmental and social contexts were indivisible. The company needed to hear from the communities, and the communities needed to tell the company whether the environmental impacts outweighed the social and economic benefits, and what was an acceptable level of compensation if the balance was acceptable.

In the mining sector, this could be seen to constitute seeking a 'social licence to operate'. Of great importance to the company was arriving at a mutually agreed outcome at a grass roots level that was robust because of its desire for manifest fairness and sound participation. OTML sought to reach agreement on appropriate compensation and development benefits based on a fair negotiation process and from a basis of clear, accurate information about the current and anticipated mine impacts.

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8 Informed Consensus as a model encompasses each of the principles of Free Prior Informed Consent (FPIC), but the model as it applies to the Ok Tedi case only relates to the company's diligence in seeking to apply the principles for the CMCA 2006 review, not the original agreements. This paper does not attempt a full discussion of FPIC. Following is a summary of the United Nations Economic and Social Council Commission on Sustainable Development's definition of FPIC. Free: it is a general principle of law that consent is not valid if obtained through coercion or manipulation. While no legislative measure is foolproof, mechanisms need to be established to verify that consent has been freely obtained. Prior: to be meaningful, informed consent must be sought sufficiently in advance of any authorization by the State or third parties or commencement of activities by a company that affect indigenous peoples and their lands, territories and resources. Informed: a procedure based on the principle of free, prior and informed consent must involve consultation and participation by indigenous peoples, which includes the full and legally accurate disclosure of information concerning the proposed development in a form which is both accessible and understandable to the affected indigenous people(s)/communities regarding (a range of specific dimensions of the development project). Consent: this involves consultation about and meaningful participation in all aspects of assessment, planning, implementation, monitoring and closure of a project. (UN 2005).
In response to these challenges, OTML and a small group of existing CMCA Trust leaders – advised by OfforSharp – put in place a negotiation and communication process based on interest-based negotiation and conflict resolution principles, what we refer to as: an Informed Consensus process.

The outcome of this Informed Consensus dialogue had to be durable for the company and the communities, and the process had to be manifestly free from coercion in truth and perception. This robustness in both the practical sense in delivering on an agreement and in garnering the trust of participants and external observers provided the major impetus for the process design.

**Process design and mechanics**

The actual parts of the CMCA review process are described below, followed by the theoretical frameworks drawn on to arrive at the components described.

**The parties**

Signatories to the original CMCA included: village leaders across the nine CMCA regions (as representatives of the impact corridor villages); the mining company OTML; and the national government. But what was clear from the operating context was that there were other parties that needed to be part of the discussion if a positive development outcome was to be achieved and the objective of robustness was to be realised.

At the core of the process was a CMCA Review Working Group, a peak, democratically-elected forum for dialogue and negotiation comprising 30–40 people. It was agreed that the working group, as the key decision-making forum, should have representatives including: the nine CMCA regions (three representatives from each region); OTML; the PNG National Government; the Western Province Government⁹; the PNGSDP (the major OTML shareholder); as well as representations of women, youth, church and environment groups. These were identified as groups that had a stake in the review, and who could potentially contribute to the outcome of the review, and if not, all were parties to the agreement under review.

The decision to have representatives for women and youth sought to bolster the voices of those who prioritise consideration of future generations and the interests of children. This was seen as a perspective missing in the decisions made in spending previous compensation payments.

A PNG civil society environmental organisation represented the interests of the Ok Tedi and Fly rivers. This representation was engaged in recognition of the river ecosystem symbolising a national and indeed global asset. This wider interest also needed a ‘voice’ in the review dialogue.

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⁹ The Western Province Government did not participate much throughout the process and the elected governor pursued a constitutional challenge to the validity of the CMCA in the PNG Supreme Court. The mine area CMCA region chose not to participate fully as they were not affected by the changed environmental predictions and not subject to increased compensation.
Church groups are responsible for the delivery of health and education services in the region and provided a voice for the wider Western Province community interests beyond the specified geographic landowner regions.

A diagrammatic representation of the CMCA Working Group review is shown in Figure 1.

Figure 1: CMCA Review Working Group composition

Stakeholder ownership and participation

The review process was developed with representatives of the communities affected by the mine. It began with a number of workshops with a group of existing CMCA Trust leaders to discuss the latest environmental information and OTML’s initial thoughts on how the CMCA review could be orchestrated. Leaders later attended a workshop at which options for such a process were developed further and a broad approach agreed.

The participation of the CMCA Trust leaders, OTML, the national government and the PNGSDP in the design of the review process, was important for ensuring ownership of the final outcome. This was seen as central to achieving a robust and enduring agreement.
The initial process-design workshop included a signed commitment by all participants to uphold the CMCA Review's Guiding Principles. These principles underpinned the instruments used in the design of the process and were a critical structural component. The principles in their brief form were:

- Integrity
- Transparency
- Equity (and participation)
- Fairness
- Respect
- Responsiveness
- Adequacy of information, and
- Timeliness.\(^{10}\)

Interpretation of these principles guided the conduct and the framework of the negotiations. They also formed the structure and set a standard for reporting by the Independent Observers, which is discussed later in this paper.

**Democratic representation**

Community representatives were chosen through a selection process that began at village level with the selection of village leaders. Each of the nine CMCA regions was represented at the CMCA Working Group table by a delegation of three village leaders, who were appointed by their peers at a regional meeting. Communities were provided with standard forms and simple guidance to support the process for appointing village representatives and were then given time to conduct their own village meetings. Figure 2 shows how village interests were carried up to the working group.

\(^{10}\) Refer to Appendix One for a more extensive description of the Guiding Principles.
Given the large number of participants, one delegate from each region sat at the working group table, with the other two seated directly behind.

This working group–regional meeting–village meeting structure and process was used to report on progress in meetings and delegate some decision making to regional groups and villages, and to communicate information from village level up to the working group. This process served as a continuous feedback loop, feeding aspirations and concerns in, and decisions out and repeated until agreement was reached.

This democratic process of leader nomination was important in clarifying ambiguities and inconsistencies in clan representation across the nine regions by virtue of their geographic and cultural diversity.

**Process staging**

Project management for the CMCA review process broke up the task into four nominal stages as shown in Table 1.

**Table 1: Stages in the CMCA review process**

<table>
<thead>
<tr>
<th>Stage One</th>
<th>Stage Two</th>
<th>Stage Three</th>
<th>Stage Four</th>
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<tbody>
<tr>
<td>Preparation and planning</td>
<td>Agenda setting</td>
<td>Negotiating</td>
<td>Agreement making</td>
</tr>
<tr>
<td>Establishing base communication about the environmental impacts ('informed'), communicating the review process as agreed by Trust leaders, and supporting the selection of village and regional leaders. Villagers were asked to prepare a list of issues for their leaders to take to the working group forum for negotiation.</td>
<td>Bringing all parties' issues to the table for discussion and agreeing ground rules and conduct of the process.</td>
<td>Working through the issues to be mutually agreed, and creating options for resolution. Bringing in independent advisers as a means of establishing objective criteria for issues under debate. Generating the cycle of working group, regional and village meetings that communicated and provided feedback on decisions so far.</td>
<td>Enshrining what has been agreed into a document as a record of the decisions made and signing of a Memorandum of Agreement.</td>
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Each stage had a goal and objectives, a list of key activities, and articulated desired outcomes. The staging and project management was supported by a comprehensive logistical program that ensured the tasks to be completed met the extraordinary geographic challenges of effectively consulting 95,000 people living along 800 km of river and 150 km of road.

A Policy and Procedures Manual was drafted to supplement OTML’s existing policies and procedures relating to community relations. It provided OTML Community Relations personnel with details of company needs and expectations with regard to supporting the process implementation without compromising the independence of the process.
Schedule of meetings

The meetings were originally planned according to a predicted cycle of regional meeting, working group meeting, regional meeting, then village meeting. This cycle was to entrench the two-way feedback loop between the villagers, their leaders and the CMCA Working Group. As it transpired, the meetings did not follow this cycle exactly, as a number of side meetings with other related parties ensued and leaders were reluctant to return to their village constituents until the outcome of these meetings was known.

Figure 3 shows the schedule of major meetings held across the four nominal stages. The time taken from the first regional meetings to the final agreement signing was approximately 18 months. The figure does not indicate side meetings.

Figure 3: Meeting schedule

Structural transparency

Transparency was critical to both securing the communities' participation in the process and for achieving the rigour necessary for a robust outcome. This was achieved through structural instruments that made conduct of the process essentially independent of the mining company. The structural instruments used to ensure a transparent and independent process included: an Independent Funds Administrator to handle financial arrangements at arms' length from OTML; Independent Facilitators to manage the conduct of the process on behalf of all the participants; and Independent Observers (and verifiers) of the process' conduct. Also, independent environmental and legal advisors were engaged to advise the working group as the process progressed. These structural instruments are illustrated in Figure 4.
Figure 4: Independent process support

**Independent Funds Administrator**

A global accounting and advisory firm was engaged to independently administer payments for the range of activities associated with the review process. OTML made payments directly into a trust account set up for the purpose by the Independent Funds Administrator. These payments covered sitting fees for working group members, and fee-for-service payments to independent facilitators, observers and advisors. The total budget for this aspect of the project was approximately US$2.5 million. This arrangement meant that payments to participants were independent of OTML, largely removing the risk of real or perceived conflict of interest or any concerns that the company might seek to influence the process through the financial arrangements.

**Independent Facilitators**

The Independent Facilitators’ role was to be autonomous of all parties involved and function as guardians of the process. A US-based not-for-profit organisation was chosen to lead the facilitation team because of its experience in processes using conflict resolution and interest-based negotiation. This lead facilitator was matched with a PNG-based development consultancy which provided a team of PNG facilitators specifically for regional and village meetings.

The facilitators’ primary responsibility was to set up and manage the process and ensure that the Guiding Principles – fairness and equity, in particular – were upheld through even-handed and skilled facilitation. Once the facilitators were appointed and meetings initiated, the facilitators were also responsible for ensuring that communication was appropriate and timely. Facilitators were independent of all parties, concerned only with helping the parties to reach agreement, and ensuring other participants had an opportunity to contribute to the negotiations.
Independent Observers

So too, the independent observers' role was to observe and not directly influence the outcome of the proceedings. Parties were kept fully accountable for their behaviour, knowing it would be observed and reported to their constituencies. The observers were eminent Papua New Guineans, chosen in keeping with Melanesian respect for 'elders'. Their task was to observe the working group and regional meetings and report against the conduct of the meetings and parties and participants' compliance with the Guiding Principles they had agreed to uphold.

The observers produced a report after each round of working group and regional meetings which commented on each of the Guiding Principles and on specific issues they had observed. Given the large number of village meetings in the process, observers relied on the Independent Facilitators' records from these meetings and did not observe them in person.

The observers proved a very powerful instrument for all parties' trust in the integrity of the process. It meant that other parties didn't need to trust OTML, but could trust that the transparency of the process would make it a fair and just forum in which to negotiate an outcome. It was an important factor in the village-level support for the process as described to them by OTML in the round of village meetings that preceded the formal commencement of the process in early 2006.

The observers' reports were circulated to participants and made publicly available to the external world through the project website. Observers were the key instrument for verification of the process and important for the rigour needed to ensure a robust process, and so, a robust and resilient outcome.

Independent Advisors

The amount of technical information generated by OTML in its investigations into the environmental impacts on the river system was enormous. Making that technical information available in a form that could be readily understood at village level, and which could also be judged to be fully open and transparent about the full account of the impacts, was an extremely difficult task. The company had lost a lot of goodwill with communities on account of the continuously changing reports of the environmental impacts.

In an effort to overcome this difficulty, an appropriately skilled scientist with experience in developing countries was selected by the working group to review the technical material and provide their opinion to the working group. This enabled the communities who may not have trusted OTML, to have the advice of a person independent of OTML. The core task of the Independent Scientist was to advise the working group members on whether or not the scientific data produced by OTML was in his opinion sound and, based on that review, whether OTML had told the communities the truth about the environmental impacts.

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11 (www.wanbelistap.com) 'Wanbel i stap' is a Tok Pisin phrase that roughly translated means 'we are together on this journey'. It can also mean that, 'while I may not be there with you physically, I am there is spirit, and will be there when it is done'.
It was also apparent that the community leaders needed trusted advice in relation to complex government and legal matters. Part-way into the process, the lead Independent Observer – a former Chief Justice of the PNG Supreme Court – relinquished his observer position to become a Special Adviser to the working group on government and legal issues. This role became particularly important as the leaders lobbied the national government during the closing stages of the negotiations.

This team of 'independents' was core to building the trust in the process needed for a robust outcome and for international satisfaction of fair play. All the proceedings were open, and documents produced and decisions made published on the project's public website and disseminated by radio broadcast and in printed form at village level.\(^\text{12}\)

**Theoretical underpinnings**

The democratic structure of representatives from the village, regional and working groups, the four stages of the project management processes, and the Guiding Principles comprise the embodiment of three major disciplines that informed the process design:
- multi-party mediation;
- interest-based negotiation; and
- relationship-based communication.

**Mediation**

The power of mediation lies in its voluntary basis and ultimate ownership of the agreed outcome by the participants. These key dynamics worked hand-in-glove with the Guiding Principles and embodiment of transparency in the independent devices. The mediation\(^\text{13}\) model applied for the review works through a five-step process as shown in Figure 5.

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\(^{12}\) The majority of Western Province is not serviced with electricity and does not have internet access but a number of other methods were used to distribute information. Radio broadcasts reached a limited number of villages although broadcast frequency limitations meant that it was confined to about 200 km from the mine township. Access to broadcasts was assisted with 500 wind-up radios given to villagers. Hard copy bulletins, Komuniti Nius, were disseminated with village patrols. An information pack describing the environmental impacts and the review process was given to each village at the beginning of the process and copies of each region's MoA was given at the conclusion of the process. A booklet is being prepared for all villagers to keep. Meeting minutes were drafted and disseminated by facilitators.

\(^{13}\) Mediation is "a decision-making process in which the parties are assisted by a third party, the mediator; the mediator attempts to improve the process of decision-making and to assist the parties (to) reach an outcome to which each of them can consent" (Boule 1996).
Figure 5: Mediation process (Adapted from Boule, 1996).
Commonalities exist with this five-stage mediation process and the CMCA review process detailed in Figure 1. The stages in the mediation process in Figure 5 can essentially be overlaid onto the four stages of the review process.

Stage One – Preparation and planning of the CMCA review enabled the parties to voluntarily agree to the mediation establishing sufficient faith in a mutually agreed outcome. This groundwork is done in a traditional mediation to establish the willingness of the parties to take part in a mediation, corresponding the Preliminaries of the five-stage mediation process.

Stage Two – Agenda setting of the CMCA review process effectively encompasses the speaking/listening and agenda setting stages of the mediation process. This speaking and listening is an iterative process taking place among all parties involved. Issues to be discussed were brought up from village level, through regional meetings of village leaders, to the peak working group forum, where these issues formed an agenda for discussion. Likewise, representatives from OTML, PNGSDP, the PNG Government, churches, women, youth, and the environment all voiced their concerns and aspirations in the review. These issues were aired and listened to by all parties and participants, giving equal ‘voice’ to all positions on the environmental impacts and compensation issue. The independence of the process supporters avoided conflict of interest and helped level the playing field for all parties and participants. As in mediation, this speaking/listening process, properly facilitated by a skilled mediator/facilitator, was critical in revealing how much common ground actually existed between opposing parties, and for establishing how the outstanding issues could be narrowed and negotiated. This was also an important stage for relationship building and acknowledgement of a shared stake in a good relationship going forward. It provided essential insight into other parties’ interests that might not previously been appreciated and may have been marginalised or obscured by some other parties.

Stage Three – Negotiating of the CMCA review process corresponds to Stages 3 and 4 of the mediation process. Having established common ground, and agreed a list of issues to be negotiated, a series of meetings ensued to work through the issues. Sub-committees can be set up to handle issues requiring more detailed analysis and one sub-committee was set up to examine and recommend a response to the working group on an environmental issue. A side process was also run to elicit the specific concerns of women and children and compensate as far as possible for their cultural ‘disenfranchisement’. The final negotiation of the review package content was part of this stage of the mediation process.

Stage Four – Agreement making mirrored the final mediation process stage. A Memorandum of Agreement (MoA) was drafted to reflect the matters negotiated as part of this stage.
Interest-based negotiation

The CMCA review process was also strongly influenced by the use of interest-based or principled negotiation (Fisher et al. 1999). This is an approach to negotiation that:

- separates the problem from the people;
- focuses on interests, not positions; and
- invents options for mutual gain.

It uses 'objective criteria' to 'test' options. The use of interests over positions is also described as integrative as opposed to distributative negotiation (Spangler 200).

This style of negotiation is congruent with the mediation process previously described. The lead facilitators were selected on the basis of having experience using interest-based negotiation in public, multi-stakeholder settings. It particularly guided the Discussing and Negotiating stages and a number of the community leaders were trained in interest-based negotiation by the independent facilitators.

Relationship-based communication

We use the term 'relationship-based communication' to bring focus to bear on the central relationships in a two or more-party communication exercise and to distinguish the approach used from the typical one-way, message-focused style of communication practised through public relations. It recognises the long-term basis of the relationship as mutual and requiring more than winning an argument in the short-term.

A relationship-based approach to communication was essential in the Ok Tedi project review negotiations as the impacted communities were largely dependent on the mining company for realising their sustainable development aspirations, and the mining company was dependent on the communities to provide the stability needed to continue its operations. Understanding this interdependence meant that communication was two-way, iterative and fully guided by the process’ guiding principles. Relationship-based communication exists or should operate when parties to a relationship have shared goals such as having much to lose and much to gain and an interlinked future. It is congruent with the mutual gains approach to negotiation inherent in mediation and interest-based negotiation.

Effective communication was also an essential lubricant for developing democracy of the process. Criticism had been levelled against the company over negotiation of the original agreements, the accusation being that people at village level didn’t understand what their leaders were signing on their behalf. It was also apparent that communication by leaders back to their communities was often poor or non-existent. The CMCA Review Guiding Principles demanded that people at village level not be disenfranchised by poor communication, and so a thorough communication process – based on independently facilitated village meetings – was established by the company from the outset.
The company managed the initial communication about the new environmental impacts and the process proposed for the CMCA review. At this point, prior to the first working group meeting, communication of working group decisions, and feedback from communities on those decisions, was handed over to the independent facilitators. They were responsible for producing and disseminating communication materials on behalf of the working group (with OTML’s logistical support) for the remainder of the project. OTML supported this communication with its own stakeholder communication through its local radio station, internal newsletter and company reports.

Communication needed to be pitched at readers or listeners who had English as a third or fourth language. To achieve this, written materials were produced in simple English, and then translated verbally into Tok Pisin and/or Tok Ples at village meetings.¹⁴

Interpreting complex, technical information was addressed by the Independent Scientist. Such communication was also critical in achieving the ‘informed’ basis of the communities’ ‘consent’. By distributing meeting minutes, draft agreements and other process-generated communication materials down to village level, the risk of villagers being left out of the process was reduced, and the principles of equity and participation more likely to be achieved. These communications were agreed to by leaders at the working group level and verified by the Independent Observers.

Importantly, interest-based negotiation and relationship-based communication were culturally appropriate to the PNG setting as they are inherent in the Melanesian style and practice of negotiation in ordinary life. Papua New Guinea is very much a relationship-based culture with a firm view as to the longevity of an important relationship for the wellbeing of the community. The process made sense to the villagers and their leaders.

The outcome

The outcome of the CMCA review can be measured on three bases:

- the level of funds in compensation;
- success in furthering sustainable development; and
- the quality of the relationship between the communities and the company.

Financial package

As a result of the CMCA review, payments to the communities by the company in settlement for the environmental impacts increased four-fold. In addition, the PNG National Government set aside five per cent of company dividends for development projects in the region, and OTML’s majority shareholder, PNGSDP, contributed a further 2.5 per cent of its dividends for projects nominated by the communities. The total value of this package was estimated at more than K1 billion (A$400 million) over six and a half years till mine closure. Table 2 presents the final package in comparison to the original compensation.

¹⁴ Tok Pisin is the most commonly spoken local language, with Motu as another common language in the West Papuan region. All facilitators spoke English, Tok Pisin and some also spoke Motu.
As part of the agreement, ten per cent of the funds in each region was allocated to programs for women and children.

**Sustainable development package – Ok Tedi Fly River Development Foundation**

A large proportion of the funds negotiated through the process were allocated towards the sustainable development initiatives negotiated through the MoA. It was agreed that a new development foundation – the Ok Tedi Fly River Development Foundation – would be created, largely under the control of the affected communities. In that way, the communities could decide their own sustainable development priorities and have a body that could attract funding for development projects from sources other than OTML. The success of the sustainable development outcomes will need to be judged over time.

A MoA was produced as a record of the decision, and a Transition Group of representatives from the working group was set up to implement the agreement and establish the development foundation.

**Relationship with communities**

The impact corridor communities, through their participation in an open process and endorsement through signing the MoA, gave OTML its social licence to operate. A survey of participants recorded some dissatisfaction that not all leaders’ requests were met but there was general satisfaction that the process achieved what it set out to achieve (Wanbelistap 2006b).

Feedback from surveyed participants on the process and outcome was largely positive and relationships between the company and its stakeholders were put on a much firmer footing. Significantly, those villages that had stayed outside the process because of their commitment to the (unsuccessful) legal actions, signed the MoA following the final agreement (which made allowance for all affected villages to benefit, even if they chose not to actively participate in the negotiations). There were (at the time of writing) 151 villages receiving benefits under the CMCAAs, with only four villages not covered.
Feedback from the company in the survey was positive, with acknowledgement that ‘the proof is in the pudding’. It was described by one OTML director as ‘a phenomenal result’, reflecting the pessimism that existed for the logistical and temporal challenges posed by the process in the Western Province in the shadow of national elections.

The strongest support came from the independent team, which saw in the process great potential for resolving other resource conflicts within PNG.

The relationship between OTML and these very diverse communities is complex and, while the review was successful in itself, the company continues to negotiate with individual communities on a full range of issues arising through its continued operations. The goodwill generated through the process is genuine, but will only last as long as all parties are seen to meet their commitments under the MoA. But the enduring quality of the relationship can also be assessed by comparison with other resource projects in PNG and in other developing countries. While OTML is a company with a strong commitment to transparency, and on a practical level, one with a predominant PNG national workforce, its relationship with its host community will remain a critical one.

Conclusions

The CMCA review process, as a response to highly complex circumstances in a logistically difficult environment, was the first of its kind in the PNG setting. As such, it provided many lessons.

Pace

The pace of negotiations is important, perhaps particularly in a developing nation. One of the key challenges of this process and the PNG setting was to allow sufficient time (partly covered by ‘respect’ under the Guiding Principles) for participants to absorb and understand technical information, and to discuss important decisions with their constituents, but to also provide sufficient momentum to ensure decisions are actually made, and don’t languish.

It was at times necessary for facilitators to push participants to state their views. Normally such a strategy can meet with resistance in PNG but, as was evident in this process, can be embraced when real outcomes are the result. Finding the right balance between ‘push’ and respect for the time needed to properly consider issues, contributes to achieving a stable outcome.

The Ok Tedi review process took six months longer than initially intended (18 months), and is more robust for it. As all parties ultimately wanted to reach a resolution, the pace was self-directed. The working group agreed that the process should end before the national election, when greater uncertainty could possibly undo progress in negotiations. Pace was a balance between the practical realities of the operating environment and participants’ view of their constituents’ right to take time to digest information and decisions.
Understanding positional bargaining

While the infrastructure of a process (design and independent instruments) may be guided by interest-based negotiation principles, it still must be expected that not all parties at the negotiating table will adopt that style of negotiation.

Positional bargaining (distributive negotiation or haggling) must be accommodated, and indeed, in some instances serves to force issues to be properly debated where they might not have been automatically aired. It is common for discussions about quantum of payments to revert to positional bargaining, and skilled facilitation will both use this and shift the discussion back to interests as previously laid out in the process.

It is important to agree and cement commitment from the group to high-level goals at the outset of negotiations so that they can be used as a ‘test’ against which specific deliberations can be put. There is a tendency for positional bargaining over dollar amounts to become the ‘sharp end’ of negotiations rather than, and before, what that sum of money is needed to fund.

Independent support team and distrust

Using independent facilitators, observers, advisers and funds’ administrators to support the process was critical to overcoming the high levels of distrust among some of the parties. It was an important response to the perception of, and real, power imbalance of the village communities and the company and PNG Government.

To realise the power of the independent support team, it is important to precisely define the role of each of the independent functions, so that team members are clear about the part they play in the process and understand the value that they bring by being truly independent of the all parties and the content of the negotiations. In the absence of this clarity, there can be (and was) a tendency for some members of the independent team to shift to an advocacy role, which undermines their independence, and potentially the fabric of the process.

Effective independent observers can ensure that the independent team itself is kept accountable and properly ‘in role’, and not become ‘captured’ by the cause of one or more parties.

Women and children’s interests

The engagement of women, and through them ‘future generations’, was largely achieved through side processes, and had mixed results from a sustainable development point of view. Participation of some strong women leaders at the Working Group table was very effective at ensuring women’s voices were heard, and some village meetings included side meetings with women alone, which was an effective approach.
There was also a separate women’s forum during negotiations to develop recommendations to be put to the Working Group, which were largely adopted. But the entrenched gender bias in the communities, as well as the sheer difficulty of conducting more than 500 village meetings alone, without the extra work of side meetings for women, meant that the engagement of women was only partially successful.

The ‘ring-fencing’ of 10 per cent of the funds for spending by women leadership only, as was proposed by a women’s forum and accepted by the Working Group, can be seen as both a victory for women and a failure. If, as was reported, men were controlling all expenditure under the current arrangements, then any increase under the control of women is positive. However, it was clear that the men saw this agreement as a ‘maximum 10 per cent’, while the intent at the time was for 10 per cent to be the minimum. The immediate impact of this part of the agreement was that trusts, which were already allocating some funds to women’s projects, redeployed these funds to general purposes as the ‘women were now being looked after’, although, in fact, it was likely to be years before funds began to flow to women under the new arrangements.

A much better outcome would have been to ensure women were substantially involved in all funding decisions, rather than being marginalised to full control over a small proportion. The governance arrangements for the new foundation, which recognise the need for strong women’s participation at all levels, will hopefully mitigate these possible negative consequences arising from providing funds specifically for women.

**Expectations of sustainable development and delivery**

It is just the beginning to have a successful decision-making process. Structural sustainable development will rely on how well the new foundation can work with PNGSDP and government to use the funds to support infrastructure. Currently, CMCA trusts fund a lot of ‘projects’, which are in fact short-lived items, such as outboard motors, which have little potential for positive long-term development outcomes. The women and children’s 10 per cent fund may have more success, but can only ever be ten per cent of available funds.

The CMCA compensation funds provide a lot of money, and the development foundation provides the potential to attract even greater funds to improve the lives of a greatly affected group of people. The amount of money in the same way masks the size of the task to be achieved. Much of its success will also rely on a sound, continuing relationship with the mining company as it approaches mine closure. Just as the CMCA compensation was as much about development aspirations as compensation for diminished livelihoods, so too is mine closure. In PNG, as in anywhere in the world possibly, this will be impossible to untangle.
**Appropriate communication**

It is very important that information provided as a basis for decision-making is appropriate for the setting. In PNG, this meant that information had to be in plain English, translatable into the relevant local language. Concepts, such as percentages and increments had to be analogised in many instances. At the same time, the very detailed technical information needed to be genuinely transparent, and for it to genuinely ‘inform’ the communities about the additional environmental impacts.

While providing an independent scientist helped overcome distrust about the company’s technical data, care needed to be taken to ensure that the parties not technically trained were able to understand what the scientist was saying.

It is important too, in selecting facilitators in any setting, but especially in the developing country setting, that they have the skills to convert complex information into simple language, and to ensure that the parties have access to technical information should they want it. Sourcing local providers can achieve this but it requires diligent application.

Evaluation of the level of understanding at village level of the environmental data and, therefore, the basis of their ‘consent’ has not been done, as far as the authors know. While the company and the leaders had confidence that villagers understood through the communication process the decisions to be made, as yet, no qualitative nor quantitative analysis has been conducted. In some ways though, the level of diligence in ascertaining how informed decisions were is moot. The communities living off the river knew the impacts even if they didn’t know the technical explanation for them. The openness of the process transcended this technical aspiration.

**Understanding the process limitations**

It is tempting, even seductive, to try to use a successful forum for discussion and negotiation to overcome wider problems. As a developing nation, a dialogue process in the PNG setting brought to the surface many problems needing attention, and the process was indeed a means of tackling some issues outside the forum’s formal scope. However, vigilance was needed to ensure the review process did not lose its primary focus and did not exacerbate existing problems with lack of government capacity by seeking to be a ‘fix all’.

Understanding the purpose of the forum and using facilitation devices, such as exploring options for resolving matters related, but outside of the scope of the forum’s charter, can serve to keep the forum focused on the business at hand. This was used effectively in dealing with sovereignty issues posed by communities living on the west bank of the Fly River – which at one point is the border with Indonesia’s West Papua – seeking restitution for environmental impacts. In this case, these issues were referred to an existing intergovernmental taskforce.
Clear project management

Large negotiation processes can be unwieldy, and rigorous project management is required to keep budgets on track and ensure delivery on actions required to keep the process moving forward. This can be difficult given the ‘hands off’ nature of providing an independent support team, but remains necessary if these sorts of processes are going to be seen to be adding value to companies and communities seeking to negotiate over challenging issues.

Scale

Even though the CMCA review was a large and complex process, the guiding principles provide the necessary lens for adapting the process to smaller scale projects. It is important to retain the functionality of the principles, while adapting the independent instruments to the circumstances. A subsequent process was designed in a different PNG setting (Lihir Island) that shifted the facilitation and project management outside of the independent instruments, relying on an independent chair and reporter to work with the project management team and facilitator. The guiding principles were retained, as was transparent reporting and independent communication.

The Ok Tedi CMCA Review, ‘A New Way Forward’, was an ambitious project, rolled out in extraordinary physical challenges. While the process can be seen to have achieved the objectives of the mining company, and there is anecdotal and widespread support for how the process was conceived and implemented, its real success can only be judged in how it might have contributed to the empowerment and general health and wellbeing of the people whose lives have been so substantially altered by the mine’s operations.

The success of the process as it can at least be judged today though, lies firmly at the feet of the parties and participants. The will and vision of OTML management to embark on and stay with a very unpredictable path, the communities to see the value in travelling on that path and carrying to the table their communities’ hopes and aspirations, and the team of independent supporters that helped the parties work their way through some very tense and seemingly intractable issues, will be what achieved any sustainable development outcomes.

Many things remain unresolved, not all complaints were dealt with. But in a very PNG way, it got there in the end.
References


Appendix One

Principles Guiding the 2006 CMCA Review

The following principles are to guide the conduct of the 2006 Review. They will form the basis of the Independent Observer’s review and reports.

<table>
<thead>
<tr>
<th>PRINCIPLE</th>
<th>INDICATORS FOR REPORTING</th>
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<tbody>
<tr>
<td><strong>Integrity</strong></td>
<td></td>
</tr>
<tr>
<td>Means: Moral soundness, honesty, freedom from corrupting influence or motive.</td>
<td>1. Honesty is apparent and any attempts to corrupt the process are dealt with effectively.</td>
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<td></td>
<td>2. Integrity appears to be maintained as well as in fact being maintained.</td>
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<td>3. The process agreed to by the parties is followed or only modified with their consent.</td>
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<td><strong>Transparency</strong></td>
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<tr>
<td>Means: being clear and transparent (see through).</td>
<td>4. Relevant information is made readily available to parties to the discussions or to other people with an interest in them.</td>
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<td></td>
<td>5. Information is available to parties and to people outside the process on how the process is conducted and how and what decisions are made.</td>
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<tr>
<td><strong>Equity</strong></td>
<td></td>
</tr>
<tr>
<td>Means: All parties have equal access to information and opportunities to contribute and respond.</td>
<td>6. Information is presented in appropriate forms and languages.</td>
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<td>7. Information is presented at appropriate times.</td>
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<td>8. Participation of women and youth is actively sought and supported.</td>
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<td><strong>Fairness</strong></td>
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<tr>
<td>Means: The process, and agreements arising from the process, was free from discrimination and dishonesty.</td>
<td>9. Fairness is observed.</td>
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<td>10. There is an absence of complaints about conduct of the process or complaints are found to be baseless when independently reviewed.</td>
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<td><strong>Respect</strong></td>
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<td>Means: to care for and heed the interests and concerns of another, to give due time for consideration of issues.</td>
<td>11. Issues raised by parties or other people with a genuine interest in the process are treated as valid and properly considered.</td>
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<td>12. Company people behave in a respectful manner at all times towards communities and other participants.</td>
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<td></td>
<td>13. The discussions are conducted at a pace that allows parties to understand the information and, where necessary, consult with those that they represent before continuing.</td>
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<td><strong>Responsiveness</strong></td>
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<tr>
<td>Means: demonstrating that concerns have been heard and respected through changing behaviour and communicating that change.</td>
<td>14. Questions raised are answered at the time to the best of the team’s abilities.</td>
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<td></td>
<td>15. Questions taken on notice are responded to diligently.</td>
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<td>16. Communities are given feedback on how they have influenced company behaviours and decisions.</td>
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<tr>
<td><strong>Adequacy of information</strong></td>
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<tr>
<td>Means: communities and their representatives have been provided with the information necessary to make informed judgments, decisions and actions.</td>
<td>17. Information provided to communities is accurate.</td>
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<td>18. Information provided covers the range of issues relevant to the community’s circumstances.</td>
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<tr>
<td><strong>Timeliness</strong></td>
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<tr>
<td>Means: communication and responsiveness are done within a reasonable timeframe so as to be of practical use.</td>
<td>19. Diligent efforts are made to deliver the process within the agreed timeframe.</td>
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<tr>
<td></td>
<td>20. Diligent efforts are made to ensure the time between issues being raised and responses being formulated and conveyed is as short as possible.</td>
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