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**Research Report**

## Making FDI in extractives work for communities: what role for community benefit agreements?

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Perspectives on topical foreign direct investment issues

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### **Making FDI in extractives work for communities: what role for community benefit agreements?**

by

Eric Werker\*

[Community benefit agreements](#) (CBAs), also known as community development agreements or impact and benefit agreements, are an important governance tool for FDI in natural resource extraction. They are usually signed by the natural resource company and representatives from communities affected by the extraction. Although these instruments emerged in Australia and Canada to recognize [obligations to Indigenous groups](#), they have since [spread across the world](#). CBAs are used to detail the obligations that companies have to communities adjacent to their investments; they often include royalty payments, local employment and business-contracting targets, shared governance, and environmental monitoring.

CBAs hold the potential to leave both communities and investors better off, thus helping host governments to bring about sustainable resource investments. [Benefits to communities from financial payments, prioritized employment and preferential contracting in CBAs can be quantified](#). Looking at two well-known CBAs in [Ghana](#) and [Canada](#), it was estimated that communities negotiated benefits worth 1-2% of project revenue. At the same time, investors in natural resource projects that sign CBAs can earn their “[social license](#)” and meet [global](#) and [industry standards](#) while [increasing firm valuation](#). Investors might even [save money](#) by developing a local workforce as required in many CBAs.

But CBAs are no panacea. Communities might find that formalized agreements sometimes [fail to deliver expected benefits](#), [cut off normal channels of communication](#) and [recreate pre-existing power structures](#), despite having set up bespoke new institutions. Investors [dislike the uncertainty](#) that comes with needing to negotiate with an additional party, and they may prefer to avoid additional expenses (although [actual obligations from CBAs](#) are relatively minor compared to project operating costs and taxes, or the potential costs of conflict with adjacent communities). Some companies may only [symbolically comply](#) with CBA terms, especially

when they have weak legal standing. And governments may be [criticized](#) as offloading their community obligations onto firms.

Hence the question: how should host governments approach CBAs in policy and negotiation? Governments have three broad options: (1) allow communities and companies to voluntarily engage in CBAs; (2) require CBAs, with or without pre-specified content or criteria, for specified stages in extractive projects; or (3) create a government-led alternative to CBAs.

Research has not [yet provided a clear answer](#) as to which approach works best. Complicating the analysis is the fact that demand for CBAs often arises when governmental policies (at all levels of government) fail to adequately protect local communities or compensate them for the negative impacts of resource development. Addressing the following two points may provide guidance to governments for what problems CBAs can be expected to solve.

First, governments should make sure that communities trust them to monitor and manage the environmental and social impacts of resource projects. This includes collecting [guarantees from companies to clean up](#) after projects end—especially if they shut down early—so that communities are not stuck with dealing with damages or costs.

Second, governments need to figure out how to divide the revenues from resource extraction—which may end up being [lower than anticipated](#)—between the general public and the communities living closest to projects. CBAs, potentially directing royalties toward [community development funds](#), can be one way to manage this; but other tools—like [fiscal rules directed to local governments](#)—can also be used.

Recent comparative research on CBAs can provide investors and communities with a [checklist](#) or set of [leading practices](#), and governments with a survey of [legislation on CBA requirements](#).

On this basis, a model clause to be included in an investment agreement could be phrased as follows:

**1. Community Benefit Agreements (CBAs)**

- a. The investor shall establish CBA(s) with local [communities] proximate or otherwise directly affected by the resource extraction activity [in accordance with Article X of the Minerals Law], and those signed agreement(s) shall be made public.
- b. The investor agrees to make [quarterly] tax-deductible payments [of 1% of the preceding quarter's gross sales revenue from the project] to the [community development "Fund."]
- c. The CBA(s) shall specify the spending priorities of the [Fund]; local employment and contracting programming and targets; and local environmental and social monitoring commitments. In addition, the CBA(s) shall specify inclusive governance practices of the agreement including [Fund] disbursement.

- d. The investor shall [pre-fund](#) the [communities'] cost to negotiate and shall finance the [communities'] cost to implement the CBA(s), including legal and expert support.
- e. Failure to comply with the terms of the CBA(s) shall result in [the suspension of the project license].
- f. Nothing in the CBA(s) shall be interpreted to diminish the investor or government's environmental or social responsibilities around the resource development, or to negate any property or ancestral rights or claims on the part of the [community].

Regardless of whether governments choose to require CBAs, they should still encourage the positive governance innovations CBAs have introduced. Sending strong policy signals and embracing the best features of CBAs can offer clarity for investors and help build a fairer and more responsible natural resource sector. After the legal and policy frameworks, however, comes the hard work: enabling and supporting participatory processes and the effective implementation of community benefit sharing commitments.

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