Every significant construction project will impact the communities around it. This is particularly true of infrastructure schemes in developing countries. A highway can run through a farmer’s fields, cutting off his access to his crops or livestock. The reservoir created by a dam can drown whole villages, uprooting their residents and forcing them to relocate. Even those not directly affected must put up with years of noise, dust and disruption from the construction works.

Partly to compensate for these impacts, governments often require the developers of such projects (or, where the projects are procured by the government, the contractors) to deliver specified benefits to these communities. The contractor building a road could be tasked with constructing a school in each settlement that it runs through. The developer of a power plant could have to provide a grid connection to every village within a certain radius. There may be a requirement to use local labour in construction of the project.

What if what the government wants isn’t what the local communities want?

Beale & Co recently acted in a dispute for the developer of a large-scale renewable energy project in Central America. The project’s local sponsor had, at the outset (and before our client’s involvement), reached an agreement with the regional authorities under which certain benefits would be delivered to the surrounding communities. Our client understood that this agreement included buy-in from these communities, and it was on this basis that our client decided to undertake the project.

However, once works began on site, it quickly became clear that this was not the case. The local communities were not satisfied with the bargain that had been struck, and were not at all happy with the project proceeding without their concerns being assuaged.

Accordingly, they made their dissatisfaction known: beginning with trespass on the site, and culminating in riots and the seizure of plant and materials. All work on the project was suspended for years, and both the delay itself and public knowledge of the trouble scared off prospective funders our client approached. The national authorities and law enforcement agencies had to step in. Had our client known that the communities weren’t happy, it would never have committed itself to the project in the first place.

What had gone wrong here?

Due diligence is key. Our client knew this: it is an experienced developer, owner and operator of electricity generating plants with a substantial portfolio of successful projects in challenging jurisdictions. It was well aware of the importance of ensuring that the local communities were on-side, and of the trouble that could ensue if they were not. What, then, went wrong?

Ultimately, the issue was that our client had relied on the local sponsor and the agreement it had reached with the regional authorities. It was only after the trouble on site had started and began to escalate that our client (against the local sponsor’s wishes) met directly with representatives of the local communities, who made it clear that they hadn’t bought into this agreement. By this time, matters had deteriorated to such an extent that resolving them was much more difficult, expensive and long-winded than it would have been at the outset.
How do I avoid ending up in this situation?

Everyone knows the importance of reaching agreements with the authorities (central and local). Delivery of community benefits is very often required under a government-procured construction contract, and may be written into a funding agreement entered into with an MDB. However, the people with the power to cause the most disruption to a project, the communities themselves, are often overlooked.

If you are proposing to undertake a project you must always, as part of the due diligence process, satisfy yourself that all stakeholders are happy for it to proceed. In relation to local communities, the above is a reminder that there are real risks in relying on assurances from third parties. In this case, the third party was the local sponsor. In other circumstances, it will often be the central or local government, which might be assumed to ‘speak for the communities’. However this may very well not be the case.

There is no substitute for going to the local communities themselves and asking people’s views: this will almost always yield far more accurate information than relying on assurances from others (who may or may not have vested interests).

In this case, a few days taking informal straw polls might have saved many years of trouble.