

COMMUNITY LEADERSHIP AND PARTICIPATION IN ENERGY DEVELOPMENT PROJECTS

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Sustainable Development Strategies Group (SDSG)

- Colorado-based nonprofit organization
- We work on research, education and capacity building programs that promote practical frameworks for sustainable management of natural resources.
- We collaborate with legal and other experts in our work in the U.S. and around the world with governments, industry, international and non-government organizations, academia, and communities to support best practices for improved governance of natural resources.
- Read more about us at www.sdsg.org.

Elements of a Successful Project

- A good ore deposit
- Legal rights to the minerals
- Necessary national, state and local permits
- *Social approval – the Social License to Operate*

The Cost of Not Having A Social License to Operate

- In September 2015, Royal Dutch Shell “abandoned its Arctic search for oil after failing to find enough crude, a move that will appease environmental campaigners and shareholders who said its project was too expensive and risky. ...Shell has spent about **\$7 billion** on exploration in the waters off Alaska so far and a hit of up to **\$4.1 billion** for pulling out of the treacherous Chukchi Sea...”

Karolin Schaps, *Royal Dutch Shell Pulls Plug on Arctic Exploration*, Reuters, Sept. 28 2014.

- In January 2014, a widespread strike of Platinum Gold Metal (PGM) mine workers at the three largest PGM producers in South Africa led to a **43 percent drop in production** at Lonmin Mine. Lonmin, Anglo American Platinum and Impala Platinum **lost US\$1.7 billion in revenues.**

Lonmin, Homepage, <https://www.lonmin.com>; AFP, *Lonmin Fines 235 Striking Workers at South Africa Platinum Mine*, AFRICA REVIEW, May 20, 2014.

The Cost of Not Having A Social License to Operate

- In 2013, Bloomberg reported, “Before pulling out of the Pebble Mine project last week, Anglo American, one of the world’s biggest mining companies, had invested **six years and at least \$541 million**...to develop the site in southwestern Alaska.”

Brad Wiener, *Why Miners Walked away from the Planet’s Richest Undeveloped Gold Deposit*, BLOOMBERG BUSINESS, Sept. 27, 2013.

- At Newmont’s Minas Conga Copper-Gold Project in Peru, demonstrations by local community members to stop the project resulted in **losses of U.S. \$2 million per day**.

Dorothy Kosich, *Peru Suspends Newmont’s Minas Conga Copper-Gold Project*, MINEWEB, Aug. 24, 2012, <http://www.mineweb.com/archive/peru-suspends-newmonts-minas-conga-copper-gold-project/>.

Grasberg Mine, Indonesia



The Cost of Not Having A Social License to Operate

- Freeport-McMoran's Grasberg Mine in Indonesia is one of the world's largest recoverable copper reserves and the largest gold reserve. Managing conflict at this mine has been extremely costly. The company's **total reported security costs (direct costs only) from 2001 – 2012 were U.S. \$352.3 million.**

Freeport-McMoran, *Grasberg Minerals District*, <http://www.fcx.com/operations/grascomplx.htm>.

- “Since July 2009 there have been **51 incidents** in and around the Grasberg minerals district, including along the roads leading to our mining and milling operations, which have resulted in **17 fatalities and 59 injuries.**”

Source: Form 10K, February 27, 2014

In a comprehensive study, the Centre for Social Responsibility in Mining found that the **cost of conflict in the extractive sector is**

- ***up to U.S. \$10,000 per day during initial exploration,***
- ***up to U.S. \$50,000 per day during advanced exploration, and***
- ***up to U.S. \$20 million per week during operations.***



Recent Research: Stakeholder Engagement Pays!

- University of Pennsylvania Wharton professor Witold Henisz and colleagues tracked the market valuation for 26 gold mines owned by 19 publicly traded firms listed on the Toronto Stock Exchange between 1993 and 2008, using an index of the degree of stakeholder cooperation or conflict for these mines.
- Key finding: ***Two-thirds of the market capitalization of these firms was a function of the firm's stakeholder engagement practices, whereas only one third of the market capitalisation was a function of the value of gold in the ground.***

Wharton, University of Pennsylvania, *Engaging with Your Stakeholders Is Worth Its Weight in Gold*, July 2011, <http://knowledge.wharton.upenn.edu/article/when-engaging-with-your-stakeholders-is-worth-its-weight-in-gold/>.

Themes in International Frameworks

- Most banks who lend in large-scale infrastructure and industrial development now subscribe to the **Equator Principles**, which set out rigorous standards for consultation, community engagement and culturally appropriate grievance mechanisms.
- The **International Finance Corporation (IFC) Performance Standard 7** now requires “Free Prior and Informed Consent” of Affected Communities of Indigenous Peoples, with **evidence of agreement.**

Themes in International Frameworks

IFC Performance Standard 1 details extensive engagement and consultation requirements

- Continuous process
- Meaningful grievance mechanisms
- Including women, youth, disadvantaged and vulnerable groups, a “range of stakeholders”
- Risk, impacts and opportunities shall be disclosed and provided to affected communities
- Consultation process tailored to the language preferences and decision-making processes of Affected Communities

Themes in International Frameworks

- The **World Bank Safeguard Policies** are being revised to include FPIC and expanded stakeholder engagement in project preparation, greater clarity on information disclosure and ongoing consultation. *The proposed revisions have many potential strengths and weaknesses – **please review and comment:***
<https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>.
- **A Current Focus at SDSG and Internationally: Community Development Agreements (CDAs)** *now expected or required* in much of the world.

CDA Trends:

- **Countries with Legislation Mandating CDAs:**
PNG, South Africa, Guinea, Sierra Leone
- **Countries that have Introduced CDA Legislation:** Egypt, Eritrea, Nigeria, Mozambique, Yemen, Mongolia
- **Countries Including CDAs in Policy Frameworks:** Afghanistan, Ghana, Tanzania, the Democratic Republic of Congo (DRC) and Namibia
- **Other Types of Community Agreements Required:** Philippines

TABLE 1

Countries that have adopted community development provisions into their national or sub-national mining laws and policies:

China (1986)	Laos (2008)
Ghana (1986)	Central African Republic (2009)
Papua New Guinea (1992)	Ecuador (2009)
Colombia (1994)	Indonesia (2009)
Philippines (1995)	Sierra Leone (2001, 2009)
Nicaragua (2001)	Ethiopia (2010)
Canada (2002)	Afghanistan (2010)
Democratic Republic of Congo (2002)	Kazakhstan (2010)
Mozambique (2002)	Vietnam (2010)
South Africa (2002)	Yemen (2010)
Peru (2004)	Zimbabwe (2010)
Equatorial Guinea (2006)	Guinea (2011)
Fiji (2006)	India (2011)
Mongolia (2006)	Mali (2012)
Niger (2006)	Kyrgyzstan (2012)
Nigeria (2007)	South Sudan (2012)

Adoption of new, or enhancement of existing, community development in mining laws is pending in the following countries:

Ghana
Burkina Faso
Kenya
Mongolia
Mozambique

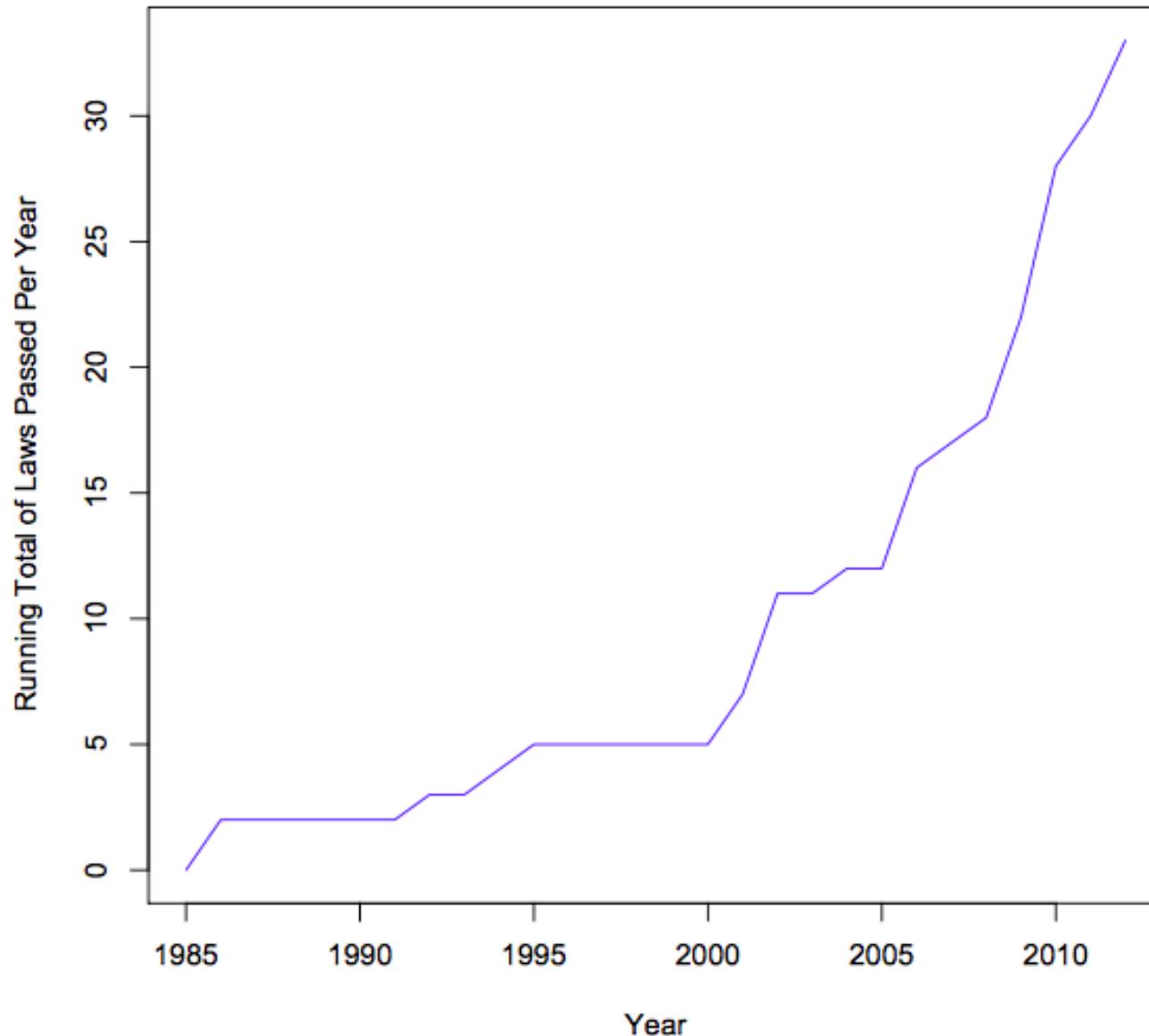
Guatemala
Myanmar
South Africa
Togo

Kendra E. Dupuy, "Community Development in Mining Laws, 1993 – 2012," in *The Extractive Industries and Society at 200 – 2015* (2014), available at https://www.academia.edu/9418639/Community_Development_in_Mining_Laws.



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Cumulative Adoption of Community Development in Mining Laws, 1985-2012



Kendra E. Dupuy,
“Community
Development in Mining
Laws, 1993 – 2012,” in
*The Extractive
Industries and Society*
at 200 – 215 (2014),
available at
https://www.academia.edu/9418639/Community_Development_in_Mining_Laws.



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Rationale for CDAs:

- **Build, Sustain and Improve Relationships** between companies, communities, governments, civil society, and other stakeholders
- **Sustainable benefits**, including pro-poor initiatives and other strategies which may be beyond the immediate scope of impacts for the project
- Manage change
- Manage disparities that may arise in impact or benefit distribution
- Ameliorate negative impacts
- Provide clarity and transparency in communication and information sharing
- Engagement and participation
- Develop stakeholder capacity

Subject Matter of CDAs

- Local community development objectives and programs to meet those objectives
- Addressing environmental, social and economic conditions during and after mine closure, and the transition to a post-mining economy
- Local business development plans
- Management and monitoring of community development programs and related funds
- Community participation in decision-making processes
- Dispute resolution and grievance mechanisms

BARRIER

LACK OF LEGAL THRESHOLDS FOR ENHANCED ENGAGEMENT

LITERACY

- basic reading skills
- ability to understand technical content
- language

ACCESS TO COMMUNICATION CHANNELS

- poor physical access to information technology such as Internet, papers, television, radio, SMS

COST

- official fees
- travel
- foregone work
- time constraints
- cost of childcare
- corruption

EXPOSURE TO RISK FROM PARTICIPATING

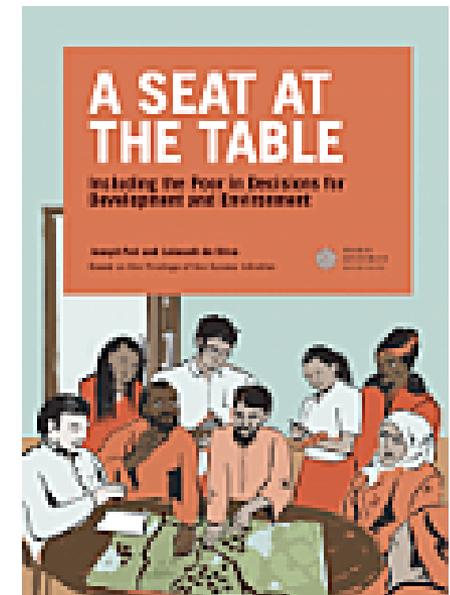
- personal risk (physical or psychological intimidation)
- property risk (threat of expropriation, burglary, etc.)

OFFICIAL DOCUMENTATION

- lack of legal identity
- burden of proof

CULTURAL CONTEXT

- expectations about who has a “voice”
- meaningfulness of participation



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Examples



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Model Mine Development Agreement (www.MMDAProject.org)



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MMDA Clause 22.1 Community Development Agreement

Within thirty (30) Days after the Effective Date of this Agreement, the **Company shall enter into Consultation and negotiations with the objective of concluding one or more community development agreements** as described in this Section or agreements with communities impacted by the Project, **to promote sustainable development and enhance the general welfare and quality of life of inhabitants**, as well as to recognize and respect the rights, customs, traditions and religion of the affected persons (each, a “Community Development Agreement”).

MMDA Clause 22.1, *cont.*

Each Community Development Agreement shall be subject to Applicable Law, and shall;

(a) Address both how local communities can take advantage of the development opportunities presented by the Project, and how the Project's adverse impacts can be mitigated;

(b) Serve as the agreement that specifies how the Company's obligation to spend funds for local development shall be met;



MMDA Clause 22.1, *cont.*

(c) Address environmental, social, and economic conditions during mining and after mine closure, and the eventual transition from a mining economy to a post-mining economy in the Project Area as may be agreed upon among the Parties to such Community Development Agreement; and

(d) Be based on the objectives listed in Annex B.

MMDA Annex B: CDA Objectives

The provisions of the Community Development Agreement (“CDA”) shall include but not be limited to the following:

- (a) The person, persons, board, committee, foundation, trust, forum, body or other entity ... which shall manage the CDA;
- (b) The duly elected person or body that represents each affected community for the purposes of the CDA;
- (c) The means by which members of any affected community will participate in the community’s CDA related decision-making processes;**
- (d) The means by which the interests of women, minority or marginalized groups within the community will be represented in the community’s CDA related decision-making processes and implementation;**
- (e) The goals and objectives of the CDA,** including an objective to improve the Human Development Index of the affected community...

MMDA Annex B: CDA Objectives

- (f) The **obligations of the Company** to the affected community including but not limited to:
 - (a) **Undertakings with respect to the social and economic contributions that the project will make to the sustainability of the community;**
 - (b) **Assistance in creating self-sustaining, income-generating activities, such as but not limited to, production of goods and services needed by the mine and the community;**
 - (c) **Consultation with the community in the planning of mine closure measures that seek to prepare the community for the eventual closure of the mining operations;**
- (g) The **obligations of the affected community** to the Company;
- (h) The **means by which the CDA shall be reviewed** by the Company and the affected community every five (5) calendar years...

MMDA Annex B: CDA Objectives

- (i) The **consultative and monitoring frameworks between the Company and the affected community, and the means by which the community may participate** in the planning, implementation, management, measurement (including indicators) and monitoring of activities carried out under the CDA;
- (j) The **language(s)** to be used in the preparation of reports, plans, and other written matters required under the CDA;
- (k) The **means by which any funds made available under the CDA are to be disbursed...**
- (l) The mechanisms under local laws and customs whereby the affected community (including members of the affected community) and the Company may lodge a grievance ...

Governance Structure from Newmont-Ahafo Social Responsibility Agreement

5. The Agreement Forum

(2) Composition of the Forum:

The Forum shall comprise the following:

- An external Moderator and Co-Moderator appointed by the Forum;
- The regional Minister for the Brong Ahafo Region;
- The General Manager, Environmental and Social; Responsibility (ESR) – the Ahafo Mine;
- The External Affairs Manager – the Ahafo Mine;
- The three Members of Parliament within the two districts;
- The two District Chief Executives;
- The two Presiding Members of the District Assemblies

Governance Structure from Newmont-Ahafo Social Responsibility Agreement, cont.

- The Amanhene/Chiefs and one subject from each community town nominated by the Omanhene/Chief;
- Two Chief Farmers, one from each District;
- Six (6) representatives of women groups, three elected from each district...
- Ten (10) youth representatives, one elected from each community town
- Two (2) representatives of Non-Governmental Organizations (NGOs), one elected from each District
- The Secretary of the Forum shall be nominated by the Moderator and approved by the Forum

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- International Bar Association, MMDA 1.0 Model Mine Development Agreement Sections 21 – 25, Annex B and C (April 4, 2011). <http://www.mmdaproject.org>.

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Questions, Comments?



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