



FINAL REPORT for: **Mining Community Development Agreements - Practical Experiences and Field Studies**



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Mining Community Development Agreements- Practical Experiences and Field Studies

For and on behalf of

Environmental Resources Management

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Date: 06/30/2010

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1 INTRODUCTION

This Final Report *Community Development Agreement Frameworks - from Practical Experience and Field Studies* has been prepared by ERM for the Oil Gas Mining and Chemicals Department (COCPD) of the World Bank. This report has been subject to a preliminary draft for discussion and has been finalized after a multi-stakeholder workshop held on June 2nd 2010.

The World Bank has sponsored previous studies on Community Development Agreements (CDAs) including most recently ¹*Community Development Agreements Model Regulations and Example Guidelines*, James M Otto that identified building blocks for successful community development agreement initiatives. These building blocks represent an agreement by several stakeholders of the critical factors for the development and implementation of a successful CDA. ERM's study further assesses the context and conditions for successful implementation of CDAs, examining the drivers of the CDA processes and identifying practical lessons learnt in relation to each of the key building blocks.

This study draws on feedback from a cross section of stakeholders and CDA practitioners and presents case studies from three different countries to illustrate regulated and non regulated approaches of CDA. The results of the study will be used to:

- provide a preliminary description of options, context, and conditions for the preparation and implementation of CDAs and lessons learnt in relation to the key building blocks of CDAs; and
- inform the drafting of community development regulations that can serve as tools or guidelines to regulate or inform the relationship between mining companies and host communities.

By drawing on practical experience to increase the understanding of the building blocks of successful community development and putting forward a framework for CDA, this study is expected to contribute to global good practice on managing community expectations and improving relationships between mining companies and associated communities. It will also provide a body of knowledge to communities and civil society as they seek to clarify their entitlements and strive to maximize the positive benefits from local mining operations. Finally, it will provide a valuable tool for policymakers as they work to translate mineral resource development into sustainable development for their people.

(1) Community Development Agreement Model, study by James M Otto

Box 1.1 *Defining CDAs*

For the purposes of this report we have assumed a very broad definition of Community Development Agreements to allow us to examine the full range of agreements similar in character, scope and objective.

We have defined CDAs as any negotiated agreement between industry (in this case the mining sector) and communities agreeing how these communities will access development initiatives.

This study draws on feedback from a cross section of stakeholders and CDA practitioners and presents case studies from three different countries to illustrate comparative approaches of CDA. The results of the study will be used to:

- Provide a preliminary description of the options, context, and conditions for the preparation and implementation of CDAs and lessons learnt in relation to the key building blocks of CDAs; and
- Inform the drafting of community development agreement guidelines that can serve as a tool to regulate or inform the relationships between stakeholders in the CDA process, dependent upon stakeholder uptake.

By drawing on practical experience to increase the understanding of the building blocks of successful community development and putting forward a framework for CDA, this study is expected to contribute to global good practice on managing community expectations and improving relationships between mining companies and associated communities. It will also attempt to provide a body of knowledge to communities and civil society as they seek to clarify their entitlements and strive to maximize the positive benefits from local mining operations. Finally, this study could provide a valuable tool for policymakers as they work to translate mineral resource development into sustainable development at a community level.

1.1 *OBJECTIVES OF THE STUDY*

The main objectives of the study are to:

- Provide an overview of stakeholders' opinions of CDAs;
- Discuss the differences between regulated and non regulated approaches to CDA;
- Provide an understanding of the building blocks of CDAs using direct stakeholder feedback;
- Present case studies on CDA in Ghana, Papua New Guinea and Argentina;

- Provide recommendations aiming to improve the process and outcomes of CDAs within the mining sector.

1.2 *LAYOUT OF THE REPORT*

The remaining report is laid out in the following sections:

Section 2: Methodology of the Study

Section 3: Background and Trends in CDA

Section 4: Case Study, Ghana

Section 5: Case Study, Papua New Guinea

Section 6: Case Study, Argentina

Section 7: Findings of the Study

Section 8: Recommendations

Annex A: List of References

2 METHODOLOGY

This section presents ERM's approach and the methodology to this study.

2.1 METHODOLOGY

2.1.1 *Stakeholder Focused*

Central to the study design was the involvement of stakeholders in the process, to inform findings and solicit feedback. In order to make the study truly representative, a cross section of stakeholders were selected from the mining industry, Government, Legal Community, Non Governmental Organizations (NGOs) and Community Based Organizations (CBOs), CDA practitioners and community representatives. The list of stakeholders to be involved was compiled in consultation with the World Bank and other consultants, such as Jim Otto, who are connected with the CDA effort. The list included country specific stakeholders in Papua New Guinea (PNG), Ghana and Argentina as well as representatives from countries such as Canada, USA, Suriname and others where CDAs are being used.

2.1.2 *Focus on Key Building Blocks*

Another important aspect of the study was the focus on the building blocks, identified through previous World Bank sponsored studies as critical to the successful implementation of CDAs. ERM sought stakeholder input concerning their practical experience in relation to the use of these key building blocks in designing and implementing CDAs to assess their effectiveness and relevance to the CDA process.

2.1.3 *The use of country specific case studies to illustrate context and conditions influencing the outcomes and impact of CDAs*

The findings of this report reflect the results of country specific case studies from Ghana, Papua New Guinea (PNG) and Argentina. These countries were selected in consultation with the task team at the World Bank.

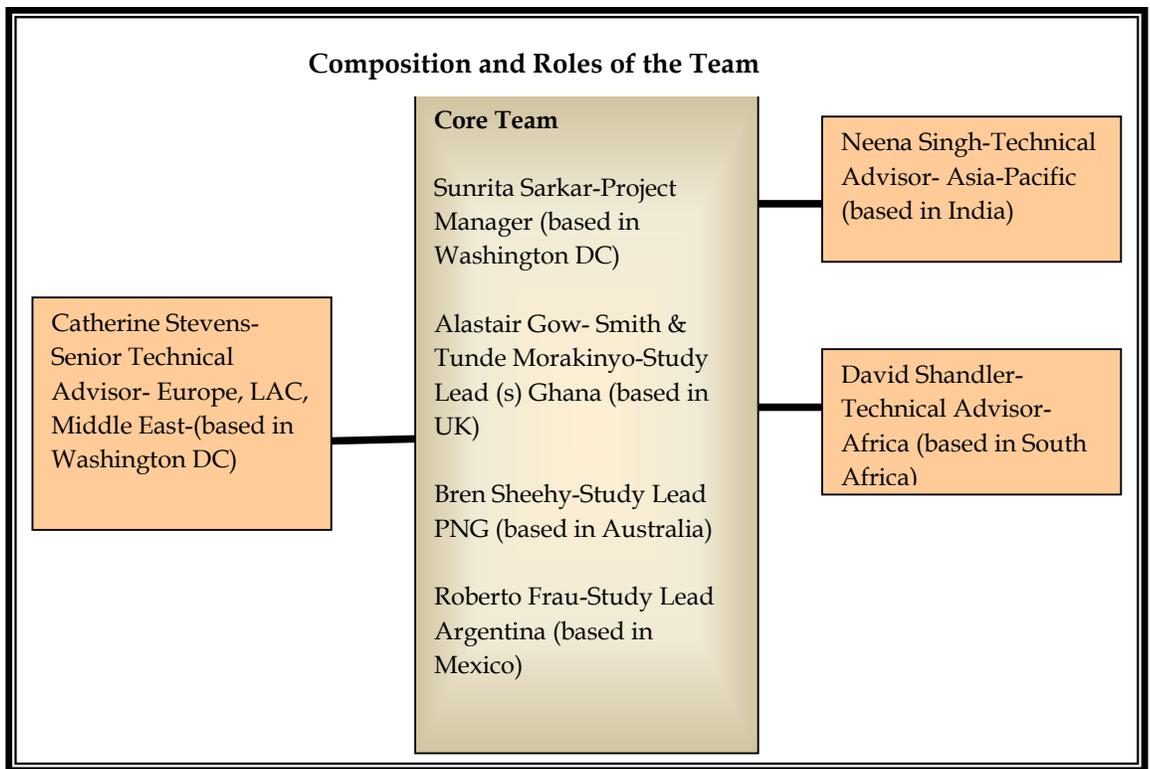
These countries were chosen because:

- There are specific mining projects that can be showcased in these countries;
- These countries have a history of CDA initiatives in mining;
- Geographical representation is important for CDA analysis;
- The three countries represent varying scales of understanding, effort and implementation of CDAs:
 - PNG is a country where CDAs are regulated
 - Ghana is moving towards a more unified model

- Argentina is in a nascent stage of development when it comes to community development because mining has resurged in the 1990s', so the CDA process is in an earlier stage of development.

2.1.4 Composition of the Team and Country Specific experts

The main study was carried out by a five member core team including a Project Manager and four Study leads, two for Ghana, and one for each of PNG and Argentina. The team was supported by a series of experts working in a purely advisory capacity providing key regional or specialist technical knowledge and understanding. Each of the study leads has extensive experience in mining and community development in the relevant countries concerned.



2.2 STUDY TASKS

2.2.1 Desktop Review of Relevant Reports, Studies and other secondary literature

ERM began by undertaking a literature review of all relevant reports and studies available concerning voluntary and involuntary CDAs. A detailed list of all references is provided in *Annex A*. This helped the team gain an understanding of the key building blocks, the main issues to be documented, best practices and possible challenges of CDAs.

2.2.2 *Survey Design*

ERM then designed a questionnaires and protocols for stakeholder interviews and field visits.

2.2.3 *Desk/ Phone Interviews*

Phone interviews were conducted with a cross section of stakeholders particularly those that were not available for face to face meetings. Some of the stakeholders were also sent questionnaires to fill out, followed up by phone interviews.

2.2.4 *Field Visits*

Field visits were made to Ghana, PNG and Argentina. The Study leads visited project sites, company representatives, Government authorities, NGOs and select community members (wherever possible) to gather information for the case studies.

2.2.5 *Preparation of Draft Report*

The draft report was prepared using information from phone interviews, secondary literature and field visits.

2.2.6 *Presentation of the findings at the Workshop*

The draft findings of this report were presented by the ERM Project Manager at a workshop held at the World Bank on June 2nd, 2010. In the workshop the key building blocks and findings of the field studies were discussed. Working groups were formed at the workshop amongst participants that brainstormed on building blocks and key recommendations.

2.2.7 *Final Report*

This Final Report has been revised to capture the proceedings and inputs from the workshop as well as larger stakeholder comments.

2.3 *LIMITATIONS OF THE STUDY*

- Due to the limited time frame allocated for this study (less than 2 months) it was not possible to hold as many meetings with community groups or direct beneficiaries as would have been desirable. Wherever possible meetings were held with formal/informal leaders of the communities instead. The inability to spend time with impacted communities meant that it was difficult to corroborate statements from other sources regarding the success of CDAs in benefitting local communities.

- Some projects and CDAs included in the study have not been implemented for a long enough time to allow the team to realistically predict if they will prove to be successes or failures. Because of this, while some lessons can be drawn from the processes, it is unclear whether the CDAs targeted will be truly sustainable models.

3 *BACKGROUND AND TRENDS IN CDA*

The successful management of the mining sector towards a more sustainable future may appear at first to be an incongruous goal. Whilst minerals may be renewable in extreme long-term geological terms, in human terms they are finite resources. The nature of the extractives industry involves the removal of an exhaustible and finite physical resource, meaning that traditional management techniques such as the concepts of sustainable yield, rotation or renewal and carrying capacity are rendered null and void by the timescale involved in the replenishment processes. For these reasons terms such as sustainability, sustainable development and sustainable mining apply not solely, if at all, to the methods of resource extraction, but also to the relationships and socio-economic environment which mining project impacts. The concept of sustainability within the mining sector therefore applies not to the practices of extraction, but rather to the conversion of the natural capital of mineral wealth into human, economic, and social capital, through for example more sustainable livelihood opportunities and community relationships.

Research projects relating to sustainability within the mining sector have developed this historical understanding of the concept and particularly important reviews included the World Bank Group's Extractive Industry Review (2004), the development of the Global Mining Initiative (GMI), and through the World Business Council for Sustainable Development (WBCSD), the Mines, Minerals and Sustainable Development Project (MMSD, 2000-2002). This research developed the understanding of a sustainable mining sector; aiming to maximize the industry's contribution to the well-being of the current generation in a way that ensures an equitable distribution of its costs and benefits, without reducing the potential for future generations to meet their own needs. The MMSD identified that this approach had to be comprehensive, taking into account the whole minerals system and economic, social, environmental and governance factors, whilst remaining forward-looking and strategic, setting out long-term as well as short-term objectives.

CDAs can and should fit into this context of sustainability in the mining sector, seeking to develop mutually beneficial and sustainable arrangements between industry, government, civil society and communities now that do not impact on the potential wellbeing of future generations. Through this engagement and agreement process CDAs look to utilize resources as a platform for achieving economic diversification and broad development goals, whilst maintaining social stability and protecting environmental integrity.

The role of robust and pragmatic CDA² within the mining sector is to promote this model of sustainability. As such CDAs should contribute to:

(2) it is worth noting that a number of different terms are used in various countries including Community Development Initiatives, Exploration agreements, Impact benefit agreements, Global Memoranda of Understanding, etc

- Averting and mitigating negative project impacts;
- Improving stakeholder relationships; and
- Helping promote mutually beneficial, sustainable benefits from the mining industry for all parties, including equitable and pro-poor benefits for local communities.

Resource Curse Theory

It should be noted that CDAs as a development initiative must fit into the context surrounding sustainability; particularly facing the associated and documented challenges for mining sector development. The Resource Curse Theory or 'paradox of plenty' notes that resource rich developing countries suffer a tendency for reduced economic growth (amongst other social, economic and political ills); a topic on which there is substantial and well documented academic argument.

Box 3.1 *The Resource Curse*

"...countries that are highly dependent on revenues from oil and other minerals... exhibit greater corruption, have a greater probability of conflict in any five-year period, have larger shares of their population in poverty, devote a greater share of government spending to military spending, and are more authoritarian than those with more diverse sources of wealth."

http://www.er.uqam.ca/nobel/cedimbb/files/Palley_Lifting%20the_Natural_Resources_Curse.pdf

The challenges for regions and nations that illustrate the paradoxical symptoms of the resource curse, is to empower natural resources and the mining sector as the catalyst for wider development goals and more diversified economic development. The International Council on Metals and Minerals (ICMM) sponsored Resource Endowment Initiative has attempted to identify the factors that have allowed some countries to benefit from their substantial resource endowments through economic growth and poverty reduction and avoid this so-called 'resource curse'. It has also attempted to determine some of the practical steps that can be taken by companies, governments, local communities and aid agencies to build a conducive atmosphere to realize these benefits ⁽³⁾.

However despite this program and others of its type (including substantial academic literature surrounding the concept), within this 'resourced cursed' context the limitations of CDAs should be recognized, including the broader policy and economic situations may limit the impact CDAs can have.

⁽³⁾ <http://www.icmm.com/page/1409/resource-endowment-initiative>

3.2 *CHANGES TO COMMUNITY DEVELOPMENT IN THE MINING SECTOR*

Historically, community development initiatives and agreements within the mining industry have been an ad hoc series of programs varying widely in impact and applicability to local requirements. The absence of any universally applicable standards or benchmark of quality for community engagement and development agreements, and varying requirements (or in many cases the absence of requirement) within government regulation has often resulted in piecemeal and hugely varying agreements between industry, communities and other stakeholders.

These discrepancies in practice (both in methodology and in quality) within the mining sector and the absence of any agreed evaluation of the necessary components and quality of community development initiatives could mean that mining companies might maintain that they had fulfilled their contractual obligations towards a host nation, despite considerable dissatisfaction and disagreement with government, NGOs and local communities. With the disparity or absences of specific requirements for CDAs, both nationally and internationally, industry practice currently continues to vary widely depending upon a range of specific local and international factors.

Traditionally historical community development initiatives, within the mining sector have tended to be mostly philanthropic gestures, based on the perceived needs of local communities with little or no participatory engagement or rigorous needs assessment. These philanthropic gestures are often practiced as part of an attempt to avoid unrest amongst local communities and to placate local governments by providing physical infrastructure such as schools or health centers. However, the continued failure of these philanthropic gestures to satisfy stakeholder expectations (frequently engendering community dependency and raising expectations) and to provide tangible long-term benefits and sustainability to communities has driven a change in the way CDAs are planned and implemented.

Continued discussion amongst industry experts and civil society now promotes more sustainable community development initiatives (often termed 'strategic community investment'). Although considered to be comparatively rare, these more sustainable methods of intervention, including enterprise and alternative livelihood development schemes for example, have been championed as an improved methodology for community development in secondary literature.

Box 3.3.2 *Strategic Community Investment criteria*

To be termed 'strategic' criteria that are applied to a more sustainable community investment process include:

- alignment with business objectives as well as local priorities (thereby delivering benefits for the business as well as communities);
 - implementation through tripartite partnerships (between industry, civil society and local government), and building local capacity;
 - being sustainable, with an exit strategy to avoid dependency; and
 - having a system in place to track the delivery of measurable impacts (rather than just measuring delivery of activities and outputs)
-

Currently the dialogue surrounding CDAs and community development initiatives has leant towards benefit sharing models including royalty and profit sharing schemes, equity stakes, community foundations and earmarking of government revenues for local development initiatives. In practice, these trends are not mutually exclusive and mining companies today, use any mix of them with varying degrees of success. However as a generalization genuinely successful sustainable benefit sharing initiatives continue to be fewer in numbers compared with philanthropic gestures. Information gathered during stakeholder interviews inferred that this may be related to the fact that stakeholders are low in capacity and cynical about mining sector development, and wish to see the immediate tangible benefits resulting from classic philanthropy.

3.2.1 *Drivers in Community Development Agreements*

The drivers for the historical shift from philanthropic to sustainable benefit sharing models in the discourse surrounding community development has stemmed from government, NGOs and the larger civil society. In the last thirty years there has been a growing level of attention globally on how the mining sector impacts the biophysical and social environments and what needs to be done to address this.

This increased interest has resulted in mounting demand for more sustainable and ethical practices from industry, the public sector and donors. This demand for more meaningful level of engagement and sustainable community development, driven by government, society and NGOs, has altered the discourse on how Community Development Initiatives are built and implemented.

One of the key drivers of change in both CDA discourse and practice has been a set of external and internal forces related to social pressure and stakeholder expectations prompted by historical and cultural phenomena such as

globalization, industrial privatization, economic liberalization and the post-Rio development agenda. These phenomena have affected, amongst other things, regulatory change which some have described as a lagging indicator of stakeholder expectation.

Some of the key drivers of change in CDA include:

Globalization

Globalization in this context is understood as a trend witnessed by industry and governments beginning to experience pressure from an increasingly networked civil society. Communities are increasingly linked with and supported by regional, national and international civil society who are able to provide resources and tools to amplify the voices of affected communities, especially in situations of perceived environmental or welfare injustice. This puts tremendous pressure on the mining industry to increase benefits received by impacted stakeholders in a sustainable manner. As awareness spreads amongst society, the mining industry reacts to potential implications for their share prices with a focus on more sustainable CDAs and attempts for more equitable sharing of local benefits.

As the world entered a Global Economic Downturn growing unhappiness amongst populations concerning perceived cuts to service delivery and the transformation of the economy amplified calls for more efficient ways in which to share benefits. This has further increased pressure on the mining sector to establish international best practice for community development. Furthermore, with budgets increasingly tightening, businesses have realized that expenditure on community investment must make economic sense for the company, demonstrate long-term and sustainable benefits for the local community, and help that community to position itself to better leverage other potential benefits of the project through initiatives such as long term capacity building etc.

Demand for Accountability from Stakeholders

A key feature in external pressures to the mining industry has been demands from shareholders for more than financial reporting from companies. An important shift in how social matters were viewed within the mining sector occurred amongst certain mining companies, including Rio Tinto and Anglo American, when they listed on the London Stock Exchange (LSE) in 1999. This change meant that they were increasingly exposed to a set of investors who expected more environmental and social reporting and more sustainable practices from the industry (although they began to feel such pressure from investors even before they officially listed overseas). The most demonstrable way in which to understand how such reporting requirements drove a change in both discourse and practice can be seen through examples such as safety reporting. A heightened interest amongst shareholders in the safety record of companies resulted in new health and safety policies and practices;

representing a direct relationship to operational cost. Similar pressures influence the environmental and social fields and the development of CDAs. Although the environmental and social impact have typically been externalized by the mining sector, pressure from shareholders has increased the focus on the risk profile of business and the related reputational and operation costs.

Emphasis on Benefit Sharing and Promotion of Equity

Both government and communities are applying increased pressure on mining companies to increase sharing the benefits of their operations with stakeholders. This benefit sharing can include payment of taxes and royalties, provision of jobs and infrastructure and provision of development initiatives.

As a response in many ways extractive industries like oil & gas and mining are leaders in implementing CDA initiatives relative to other commercial sectors such as telecommunications, retail and service sectors, largely relating to the increased pressure and international focus they receive. It has been speculated that this pressure is related to the greater direct impacts of mining projects on affected communities, the ease with which these impacts are identified, and the expectations for benefits which they raise. This pressure is exacerbated by an ideological opposition to the mining industry from certain anti-mining NGOs and groups who perceive the sector to produce little local development whilst generating large profits. These NGOs and other groups put pressure on the mining sector in relation to community development initiatives, increasing a belief amongst the public that they should be more active in sharing benefits.

At the local level, communities can exert considerable pressure on mining companies, which has resulted in increased commitment to more equitable benefits. This reaction by community groups is often in response to perceptions that government is failing to meet their needs, resulting in a shift to other groups who may be able to deliver upon their expectations. This improved ability of communities to exert pressure is linked to, amongst other things, an increased awareness of their rights, increased literacy and education levels and improved access to technology and information. The vehicle of the internet combined with an increasingly networked global media has been a catalyst for NGOs and other groups to be much more successful in raising awareness globally of perceived injustices, driving change through informal channels.

Standards and Regulatory Requirements

Both international standards and national legislation have been important drivers of change in both the discourse and application of CDAs. Legislation, in particular, is one of the most effective drivers of real change in the practice, although even in the context of regulatory requirements there are mixed results as to its effectiveness in relation to CDAs.

The Business Case for CDAs

The mining sector has also changed its CDA practices based on internal pressures. Companies have realized that improved relationships with stakeholders are an important way in which to not only to manage risk but also to create business value; incorporating issues of equity into business efficiency. The response within the mining sector tends to involve a series of internal policies and procedures, often based on voluntary best practice standards. The inclusion of social development issues within institutions such as the ICMM and associated guidelines is typical of the internal drivers to CDA change within the sector.

3.3 COMMUNITY DEVELOPMENT AGREEMENTS - THE LACK OF GLOBAL DEFINITIONS AND STANDARDS

Theoretically, the rationale for a robust CDA should be universally accepted; lowering risk profile for industry, improving stakeholder relations and helping to provide sustainable development initiatives. In practice, based upon the research undertaken for this report, this is not always the case. Several respondents during the research process indicated that CDAs often meant different things to different stakeholders. Some respondents also talked about the inherent conflict of interests that occurs in the design of CDAs. This included examples in Indonesia and the Netherlands where governments have actually discouraged companies from carrying out community development for a variety of reasons. This feedback from stakeholder interviews highlights the variation in CDA scenarios.

Box 3.3.3 Conflicts of interest

While there are multiple cases where CDAs have been encouraged by governmental and nongovernmental actors, the reverse is also true. There are multiple cases where governments have actually discouraged companies from carrying out consultation and community development due to a conflict of interest between local communities and other levels of government.

In some cases, companies have been more willing to engage with communities than with regional and national governments. Such conflicts of interest tend to be of political and economic nature, based on the perceived benefits that engagement with certain communities may have on regional or national issues.

In extreme cases existing tensions have been exacerbated by the development of mines and the perceived benefits of such development to different actors. For example, the Grasberg mine in Indonesia was developed in a culturally diverse and divisive area. While local people were hostile to the project, a government sponsored Internal Transmigration Program brought Javanese workers to live and work in the mine rather than local residents. The agreement between the government and the company led to the perception that the majority of project benefits were going to the transmigrants and not the local communities. This situation led to civil unrest and loss of life.

There is an absence of a common reference framework and universal industry standards/government guidelines resulting in CDAs existing as an ad hoc and varied series of agreements. Where they do exist it is often in hugely varying forms sparking various levels of acceptance amongst stakeholders.

To fill this void and provide strategic advice on community relations various voluntary initiatives have been developed that provide guidelines on how to design and implement Community Investment (which can often result in written agreements). Examples of this includes the Community Development Toolkit (World Bank/International Council on Mining and Metals), the IFC Performance Standards (although not voluntary when borrowing from Banks, they are also used as a template by organizations not borrowing money), the IFC Guide to Strategic Social Investments, mining related guidelines contained in the World Bank Group Environmental Health and Safety Guidelines, as well as numerous individual company codes of conduct. However, these documents have yet to standardize the 'building blocks' for a successful CDA and there continue to be severe discrepancies in the standard of practice, including for example, how the mining industry defines community, practices free prior and informed consent and reports transparently on their activities in relation to the CDA process.

As previously discussed, the mining industry is increasingly focused on achieving a robust social license to operate. However, despite this increased focus upon community support, the operation of voluntary tools and standards varies enormously in content and scope, often within the same company.

As expected, CDAs appear under several different guises and using a range of terminology in response to different actors and different countries.

Box 3.3.4 *Different terms and types of CDAs*

Based on interviews conducted with stakeholders globally, agreements similar in function to CDAs are referred to as:

- Community Development Agreements
- Community Development Initiatives
- Voluntary Agreements
- Indigenous Land Use Agreements
- Partnering or Partnership Agreements
- Community Contracts
- Landowner Agreements
- Shared Responsibilities Agreements
- Community Joint Venture Agreements
- Empowerment Agreements
- Exploration Agreements (Canada)
- Impact Benefit Agreements (Canada)
- Social Trust Funds (Peru)
- Investment Agreements (Mongolia)
- Benefits Sharing Agreements (Chile)

It should be noted that while this list details several different types of agreement between the extractives industry and communities, the specific detail of each can vary considerably.

3.3.1 *Global overview of Regulatory and non regulatory approaches*

Despite the proliferation of international guidance and standards pertaining to community engagement and development there is no widely accepted international standard, or regulatory framework, for the design and implementation of CDAs within the mining sector.

Due to the discrepancies in quality of CDAs that have occurred as different companies following different approaches in different countries, the need for mandatory CDAs is finding support. During the study, this view was expressed by NGOs, development agencies and representatives of the World Bank. This desire for CDA regulation was, however, not supported by the private sector at all.

Mandated requirements to include benefit sharing or other community development focused initiatives have been included in some country's mining regulations. However, as a legislative requirement this is still comparatively rare. Countries with strong policy and regulatory approaches include Chile, Papua New Guinea (PNG), and South Africa. In addition, Egypt, Eritrea, Guinea, Mozambique, Nigeria, Sierra Leone, and Yemen have recently introduced community development regulations. It is understood that Ghana, Tanzania, the Democratic Republic of Congo (DRC) and Namibia are increasingly seeking to entrench community development initiatives within their policy framework.

It should be noted that the discourse surrounding CDAs does include some concerns that regulation may undermine the role of government in delivering community benefits. These fears are focused on the worry that government will be marginalized from the development agenda if the mining sector and their stakeholders directly negotiate agreements between themselves. This may include situations where development initiatives as part of a CDA are separate from government strategies and targets or where government abdicates their responsibility for development under the preconception that the mining industry will assume accountability for local development surrounding their concessions. Other concerns include fears that where governments are marginalized from the CDA process stakeholders may potentially be exploited and not receive suitable opportunities as part of negotiations.

These concerns serve to clarify the necessity that for a successful regulatory framework for CDA, nations must be armed with an understanding of basic principles and best practices that govern the formulation and implementation of CDAs. However depending upon regulatory context this may include the adoption of different tools or instruments to achieve this framework.

In light of these concerns and a shifting discourse surrounding regulated CDAs the following section details some of the current legal pretexts for CDAs or agreements of a similar type.

Canada

In Canada, the practice of using community development agreements within the mining sector began in the late 1980s under the guise of Exploration Agreements and Impact Benefit Agreements (IBAs). Increasing pressure from communities and civil society essentially forced companies to sign these types of agreements in order to carry out mining projects. They have never been regulated or required, but now there are over 150 projects with signed exploration agreements or IBAs in the country.

Box 3.3.5 *History and Content of IBAs*

While there are no legal regulations for community development, common content of the two types of agreements include:

- *Exploration Agreement*: less formal agreements used to provide initial benefits to communities throughout exploration, often including provisions for training. These tend not to include formal agreements on employment or provisions for profit sharing or other payments since the project is not yet guaranteed;
 - *Impact Benefit Agreements*: confidential agreements between companies and communities regarding impacts and benefits. The content depends on the specific context of the project and community, but typically includes provisions regarding employment, payments, profit sharing, social development initiatives and environmental initiatives (such as participatory monitoring committees). Generally IBAs are self-evaluated by the signing parties and include frameworks or provisions for adjustment throughout the project in the event that both parties negotiate a change to the original agreement.
-

IBAs generally function as private or part-private contractual agreements between industry and indigenous or First Nations communities without government involvement, although early IBAs were negotiated by government on behalf of communities. These agreements are developed as a mechanism for establishing formal relationships between industry and community to address the adverse effects of commercial mining activities on local communities and their environments, and to ensure that these communities receive benefits from the development of mineral resources.

Within Canada, IBAs are dependent upon the unique *sui generis* legal rights of indigenous or First Nation communities and the Supreme Court of Canada has established the unique entitlement that these people hold to land title and mineral rights. Where land claims have been settled, First Nation people may own surface and subsurface rights to some areas within the land claim settlement area and such ownership allows them to control whether and how mining can proceed, with IBAs acting as the compensatory framework for the mining activities. In cases where land ownership is not as clear and where IBAs are not sought through First Nation people land claims they may still be pursued to engender stakeholder support for a mining project. Such a requirement may be part of an overall social policy to benefit indigenous communities or because a mining company is predicted to have a significant social and/or environmental impact and wants to ensure mutual stakeholder support.

Papua New Guinea

The 1992 Mining Act in PNG states that the holder of a mining concession should not enter or occupy land for the purpose of mining until they have reached and registered an agreement with the project landowners on the amount, times and mode of compensation. The terms of compensation need to be agreed with landowners, which in PNG, where landownership is generally

held in customary tenure, means that mining activities can be conducted only with the consent of, and in partnership with, traditional landowners (and frequently only by helping to resolve land disputes between competing landowner groups). Upon agreement of the terms of the compensation agreement, the project developer must submit a copy of the proposed compensation agreement to the Chief Warden, who will register the agreement or may request changes.

Box3.3.6 *Papua New Guinea; conflict as a stimulus for community development agreement guidelines*

The stimulus for regulatory reform and the potential inclusion of CDA requirements in Papua New Guinea (PNG) is situated in the complex history of mining industry development within the country, including both positive and negative lessons learnt.

The research process highlighted one noteworthy case which may have caused many to reconsider the relation between mines and communities. The Bougainville Copper Company's Panguna Mine, one of the largest open pit gold mines in the world during the 1970s and 1980s, closed in 1989 as a result of complicated and politically motivated opposition from local communities, leading to sabotage of the mine by the Bougainville Revolutionary Army. There was significant loss of life which shocked observers and stakeholders and has led to a reconsideration of the interaction between mines and communities. At the time, mining licenses on the island were suspended.

In addition Section 3 of the 1992 Mining Act requires the formation of Development Forums. The Development Forum is a process of negotiation between national, provincial and local governments, affected landowners and project developers prior to the issuing of a Special Mining Lease. The outcomes of these negotiations in the forum are typically a tripartite set of agreements between national government, provincial government and landowners, and a Mine Development Contract between the national government and mining corporation.

Peru

Approximately ten years ago the Government of Peru began requiring mining projects to establish a Social Trust Fund jointly administered by the company and the government. The required amount of investment in the trust fund is based on a percentage of the purchase price of the mining concession, rather than a percentage of the production or earnings. However, despite such requirements, compliance and successful implementation of Social Trust Funds was limited during the first ten years the policy was in place. Only recently have Social Trust Funds been established and monitored according to the original intent of the policy.

In addition to the mandated Social Trust Funds, research and interviews undertaken mentioned that some companies are implementing additional

voluntary trust funds or foundations to provide further community development assistance. The mining sector see this type of voluntary initiative as a practical means of establishing their social license to operate and mitigate the complex social risks of carrying out mining projects in Peru.

Mongolia

While there is no specific CDA regulation in Mongolia, research and interviews undertaken mentioned that some mining companies have found that components of CDAs are being integrated into other formal agreements. An example given during the research process includes a Rio Tinto project recently that was encouraged to sign an Investment Agreement between the company and the national government which included provisions for local and regional development as well as other social investments. While the agreement was signed after the licensing process had been completed, the context suggested that the project would not be viable without the agreement in place.

Nigeria

Whilst this pertains to oil/gas projects rather than mining projects, the experience of the companies is worth outlining. For several decades, there has been a persistent demand from communities for a greater share of the benefits from the oil industry. Despite the fact that 90% of Nigeria's foreign exchange comes from oil wells in the Niger Delta, this region remains one of the poorest parts of the country. From the 1960s to 80s, all the oil companies each ran their own community development programmes directly with communities. In the 1980s the government legislated for all the oil companies to pay 3% of their profits into a fund to be administered by a government parastatal called the Niger Delta Development Commission (NDDC). The NDDC receives over \$800 million/year. However the oil companies have expressed extreme dissatisfaction with the activities of the parastatal saying that most of its activities are devoted to funding big grandiose projects outside of the companies' host communities. The leadership of the NDDC has changed frequently in recent years amidst on-going charges of corruption and financial mis-management. Most oil companies therefore fund their own community development projects through MoUs negotiated directly with the communities in addition to their payments to the NDDC. Chevron has had a series of MoU's which has changed the nature of the relationships between the company and the communities.

South Africa

In South Africa mining projects must comply with the legislative framework established under, among others, the Mining Charter, Labor Laws, and Black Empowerment Laws. While there is no specific CDA regulation, the research process and stakeholder interviews inferred that the mining sector commonly

uses Trust Funds to manage community development issues in compliance with the established legal framework.

Zimbabwe

Mining projects must comply with the new Indigenization Policies established to empower local communities. Such regulations focus primarily on the provision of employment opportunities to local residents, project and company ownership and benefits sharing. However, there is no specific CDA regulation.

4 *CASE STUDY: GHANA*

The Ghana case study presents the context and conditions of CDA development and the environment within which these agreements have been implemented successfully. The research seeks to uncover the drivers for CDA development and the practical lessons that can be learnt from examining the context of these agreements within Ghana.

While the case study presents an overall picture of CDAs in Ghana in general, it focuses on the Newmont Ahafo project to present an example of implementation and lessons learnt.

4.1 *LEGAL CONTEXT OF CDAs IN GHANA*

Legislation within Ghana exists for Environmental and Social Impact Assessments (ESIAs) for mining and infrastructure projects. However, there is no legal requirement for industry to develop CDAs. The Mineral Commission of Ghana is currently reviewing the possibility of developing such legislation but this has yet to be introduced. During interviews, the Mineral Commission explained that when the Mining Act was developed in 2006 various Members of Parliament mentioned the need to include CSR considerations as a requirement for the mining sector, but nothing was adopted. According to the Chief Executive Officer (CEO) the Mineral Commission is conducting a study to review guidelines for Community Development practices through a variety of stakeholder validation workshops with a view to developing some broad Community Development principles to include within the Mining Act. The specific details of such a mandatory requirement in the Mining act would potentially be defined at a local level with only generalized requirements and principles declared in legislation. However, this is currently some distance off and it is unclear when and if this will occur.

As a result of the absence of mandatory CDA development the mining sector within Ghana has worked proactively to adhere to voluntary best practice standards for community engagement, relations and development. Besides the Newmont's Ahafo project this has also included projects of Goldfields, Ghana Manganese, Ghana Bauxite and Golden Star Resources. The Mineral Commission explained that most of the large scale mining companies practice some form of community engagement, development and/or community investments all of which vary from case to case and degrees of effectiveness.

The Ghanaian research highlighted several challenges and lessons learnt in relation to successful CDA practice.

4.2 *SUCCESSSES OF VOLUNTARY BEST PRACTICE STANDARDS FOR COMMUNITY DEVELOPMENT AGREEMENTS IN GHANA*

In the absence of mandatory CDAs within Ghana there are certain successes attained as a result of voluntary best practices followed by the industry.

- Representatives of the Mineral Commission stated that, wherever industry recognizes community development as a priority, by adopting voluntary best practice standards the mining sector can help generate their social license to operate and develop successful community relations and more equitable benefits;
- According to the Mineral Commission and the Chamber of Mines, much of the large scale mining sector within Ghana already works to industry best practice standards, levels that supersede existing legal CDA requirement in other countries. As a result, interviewees stated that the mining industry is of the opinion that when given the freedom to comply with international standards they can work to develop genuinely sustainable CDA initiatives. This viewpoint was expressed by several interviewees including representatives of Newmont, who indicated their fears that mandatory CDA standards would create a 'lowest common denominator' system where the mining sector performed only to the bare minimum required.
- Representatives of the Chamber of Mines and Mineral Commission both indicated that in remote regions of Ghana, due to reduced capacity and resources, government has scantily developed national and regional development plans. Without a regional planning model CDAs are often forced to operate in isolation, lessening their positive impact for beneficiaries. The NGOs too stressed the need for integrating CDAs with regional planning needs.

4.3 *CHALLENGES FACED BY THE APPLICATION OF VOLUNTARY STANDARDS FOR COMMUNITY DEVELOPMENT AGREEMENTS IN GHANA*

There are certain challenges faced in the absence of regulations on CDAs and by applying voluntary standards:

- Without legal clarification regarding the obligation for and detail of CDAs there is always a danger that industry will subscribe to the path of least resistance and not devote suitable time, effort or resources to community engagement, relations and development. The application of voluntary standards could mean that the mining sector fails to apply themselves sufficiently to the CDA process resulting in reduced levels of sustainable and equitable benefits for stakeholders. This view was expressed by all of the interviewees in Ghana, but was particularly stressed by the Mineral Commission who mentioned an example of a gold mining company who signed a CDA but, due to lack of

commitment by all parties, faced problems associated with community relations.

- Without legal clarification and monitoring by government of voluntary CDA activities the mining sector, especially the medium sized companies, could struggle to measure and deliver successfully in relation to community engagement, relations and development.

4.4 CHALLENGES THAT COULD BE FACED IF CDAs WERE MANDATORY

Despite the awareness of the risks of not having regulated CDA, stakeholders raised a series of concerns:

- Stakeholders expressed concern that mandating CDAs for the mining sector in Ghana could result in government abdicating their responsibility for local and regional development and service provision;
- In regions that struggle with reduced capacity and a lack of resources, stakeholders worry that, if the government were to institute overly specific requirements regarding CDAs, these may function as obligation to industry to fulfill a service provision and development role that should be the remit of the government. Ultimately this could reduce the mining sector's willingness to invest in the country and reduce potentially associated development benefits. This viewpoint was expressed during interviews with representatives of Mining Companies who feared that CDA regulation would force the mining sector to govern by proxy in areas where they had a mining interest.
- In every interview conducted with the mining sector, interviewees expressed concerns that, should mandated legal requirements for CDAs be developed, this would remove the ability of the mining sector to develop these types of agreement within the specific local context. This could reduce ability to address the on-the-ground realities that the impacted communities face. The success of community relations and development within the mining sector are often reliant upon specific anthropological, political, socio-economic, historical or cultural nuances, and because of these the 'one size fits all' approach may not work.
- Concerns were expressed by representatives of Newmont as well as the Mineral Commission and Chamber of Mines in Ghana that mandated CDAs would result in a feeling of entitlement from stakeholders. It was expressed that this entitlement would reduce the involvement of stakeholders in the CDA process, whilst certain parts of the mining sector would see the process as a box ticking exercise, reducing their genuine commitments to development.

4.5 NEWMONT

Newmont is a global mining company extracting primarily gold and some copper with operations in the United States of America (USA), Mexico, Peru, Bolivia, Australia, New Zealand, Indonesia as well as two main concessions within Ghana at Ahafo and at Akyem. Incorporated in 1921 Newmont have their headquarters in



Denver, Colorado (USA) and employ in excess of 31,000 employees and contractors across approximately 100,600 km² of land for which they have land position, mineral extraction concession or ownership.

As a company, Newmont states that it is committed to uphold or operate to several voluntary standards including the Universal Declaration of Human Rights, the World Bank Safeguard Policies, the Equator Principles, the United Nations (UN) Global Compact, the Voluntary Principles on Security and Human Rights, the Extractives Industry Transparency Initiative (EITI), 'Publish What You Pay', the World Economic Forum's Partnering Against Corruption Initiative, the Sullivan Principles and the International Council on Mines and Metals (ICMM) Sustainability Principles. In addition to this, Newmont use the Institute of Social and Ethical Accountabilities standard on stakeholder engagement (AA 1000) to guide the formation of its policies and standards and report in accordance with the requirements of the Global Reporting Initiative (GRI).

4.5.1 *Background of the Ahafo Project*

The Ahafo Gold Project (Ahafo) is based in the Asutifi and Tano Districts, Brong Ahafo Region of central western Ghana. The project is situated on a concession of approximately 720 km² and is split into two phases: Ahafo North and Ahafo South. Construction of Ahafo South began in April 2004, mining started in early 2006 and gold production began later the same year.

As an integral part of the project Newmont have developed and disclosed a series of project related documents which detail the specific environmental and social conditions and associated action plans to avoid or mitigate adverse impacts and promote positive impacts of the project. These documents have been developed as part of the funding conditionality of the International Finance Corporation (IFC) and Newmont's internal Corporate Social Responsibility (CSR) policies. The documents developed include the *Resettlement Action Plan – Ahafo South Project*, *Environmental and Social Impact Assessment – Ahafo South Project*, *Public Consultation and Disclosure Plan – Ahafo South Project* and the *Ahafo south Project Independent Assessment of Resettlement Implementation*.

As part of this program of project impact assessment and resettlement, and a commitment to economic and social development of project impacted communities, Newmont have also developed formal agreements with Ahafo communities covering broadly the roles responsibilities of different stakeholders, the specific detail surrounding employment and job creation as well as the terms of the development of the Newmont Ahafo Development Foundation (NADeF).

4.5.2 Existing Community Agreements and Associated Processes

Currently there are three CDAs in existence at Ahafo:

- Ahafo Social Responsibility Agreement;
- Local Employment Agreement;
- Newmont Ahafo Development Foundation Agreement.

Representatives of Newmont explained during interviews that the Ahafo CDAs took approximately three years to develop and involved the signatories of Newmont Ghana, local traditional leaders from Kenyasi One and Two, Ntotroso, Gyedu, Techere, Afirisipa, Wamahinso, Adrobaa, Yamfo, Susuanso and the District Chief Executives of Asutifi and Tano North.

As a precursor to the commencement of CDA negotiations Newmont practiced a rigorous period of stakeholder engagement and capacity building aimed at disseminating information about Newmont, the aims of the forum and negotiations, as well as improving technical skills in topics such as land ownership legislation and negotiating techniques. The Outreach Communication Plan operated by the Newmont Community Relations Team worked to inform and educate stakeholders prior to the development of the forum. This included meetings with individual communities as well as groups representing specific stakeholders such as women's and youth groups. This range of stakeholder engagement activities was designed to promote capacity development in the area as well as to disseminate information and raise awareness of the Ahafo CDA negotiations.

Newmont representatives explained that during the stakeholder engagement activities the Newmont Community Relations Team encouraged the participation of potentially marginalized people. However, ultimately the definition of groups to be included was decided by the communities themselves.

In parallel to the Outreach Communication Plan designed to raise capacity and awareness surrounding the CDA process Newmont practiced rigorous stakeholder engagement activities to develop a representative council to negotiate the CDAs. Originally involving the 15-8 traditional leaders from the communities within the mining concession, this was eventually expanded to include 54 representatives including regional government, community groups (including women, youth etc) and NGOs.

Newmont representatives explained that the communities included within this forum were limited to those identified as directly impacted by the Ahafo Project; i.e. those within the boundaries of the mining concession. These criteria were defined during negotiations with stakeholders in the area. The terms of the CDAs officially describe the Ahafo Mine Local Communities as:

- *Community towns that are physically located in the Mining Lease of Newmont... within the current operational area of the Ahafo Mine Project or within the Mining Lease are under active exploration.*
- *Community / traditional areas that have a significant amount of its traditional land covered by the Mining Lease of Newmont... within the current operational area of the Ahafo Mine Project or within the area of the Mining Lease under active exploration.*

As the groups to be involved within negotiations for the CDA were finalized (ultimately forming the Ahafo Social Development Forum) Newmont began a period of approximately two years of capacity development.

During negotiations the impacted communities were represented and received legal advice from a qualified lawyer and all negotiations were moderated by a neutral Professor, an expert in the area. The ASDF worked with Newmont to define the terms of the CDA during negotiations ultimately for clarity, splitting it into three parts: roles, responsibilities and behaviors (including conflict resolution), the creation of the Newmont Ahafo Development Foundation and the agreements surrounding local employment and education.

Ahafo Social Responsibility Agreement

The Ahafo Social Responsibility Agreement defines the roles and responsibilities of stakeholders within the CDA process. Within the agreement those stakeholders involved agreed to aim to:

- *Provide a clear transparent and explicit statement of the commitment of the parties herein;*
- *Provide the Community with the opportunity to participate in the Company's decisions and plans that may affect the Community and its environs;*
- *Build strong communication ties between the parties;*
- *Set out the key principles and directions on how the Company and the Community will work together for their mutual benefit;*
- *Define the key issues that the Company and the Community intend to address;*

- *Ensure the sustainable development of the Community;*
- *Provide for the establishment of a Forum to deliberate on issues of mutual interest and to oversee the implementation of the Agreement herein;*
- *Provide for the establishments of the Newmont Ahafo development Foundation, and*
- *Provide for a Local Employment Agreement.*

The first of three agreements, this CDA aims to provide a clear transparent statement of the commitments, principles and direction of the stakeholders involved in the promotion of development for impacted communities while encouraging improved communication and relations, and community involvement in Newmont's decisions for which they are affected. In addition this agreement determines the commitment to establish and operate the Ahafo Social Development Forum (ASDF) to deliberate on issues of mutual interest, as well as for the establishment of further agreements concerning the Newmont Ahafo Development Foundation and a Local Employment Agreement.

Beyond these aims the agreement continues to define the composition, functions, roles, schedule and powers of the ASDF, Complaints Resolutions Committee and Standing Committee which will act on behalf on the forum during its recess. The agreement continues to define the roles and relating principles of the identified communities and citizens, the company and employees and the District Assemblies. This included definition of participation and transparency management issues such as conflict resolution and communication management, as well as specific procedures for electing representative bodies to the ASDF and amending and reviewing the terms of the agreement. Annexed to the CDA there is a range of plans including a participatory monitoring management plan, an Information and Communication Management Plan, a Land Access and Compensation Plan and a Closure and Rehabilitation Management Plan.

Local Employment Agreement

Supplementary to the Ahafo Social Responsibility Agreement a Local Employment Agreement was developed specifically to handle matters relating to employment and education.

The preamble to this agreement states the desire to promote '*peace and harmony between the Company and residents of Ahafo Mine Local Community*', as well as Newmont's commitment '*to discussions and consultations...on issues of mutual interest*'. Ultimately the agreement defines the policies Newmont has and will adopt in relation to employment, agrees to settle all disputes and agreements through mediation, stating that neither party may amend the agreement without the consent of the other.

Representatives of Newmont explained that this agreement defines that Newmont will seek to hire skilled labor in relation to qualification with assurances given regarding local advertisement and preference, where possible, to local community citizens. Regarding unskilled labor the agreement states that Newmont will use its best efforts to hire validated local community citizens from a fairly distributed range of impacted communities. Additionally Newmont agrees to work towards employing 35 percent of their workforce (including contractors) from local communities, working to improve this to 50 percent within ten years. The CDA continues to provide legal definitions for citizens of local communities, distribution of labor, procedures for recruitment and monitoring and reporting details. The CDA continues to define education and training principles as well as provision for any details of the agreement contradicting and law or future law.

Newmont Ahafo Development Foundation Agreement

The background to this agreement explains that the rationale for the creation of the Newmont Ahafo Development Fund (NADeF) is born out of a desire by Newmont to '*ensure local communities benefit from its operations*'. Within the NADeF Newmont state their intent to pay one United States Dollar (US\$ 1) for every ounce of gold sold by Newmont in its operation under the Ahafo Mining Lease towards the NADeF. Within the CDA Newmont have also stated that one per cent of their net pre-tax income, after consideration of all inter-company transactions derived from the Ahafo Mining Lease, of any gains equal to or in excess of US\$ 100,000 will be paid to the Foundation.

In addition to payment details and methods of generating resources this agreement defines the conduct of the Foundations' affairs, the composition, conduct, terms of office, schedule of meetings and function of the Board of Trustees and Office of the Secretariat. The agreement also details the definition of sustainable development projects as agreed by Newmont and the Board including exemplar acceptable sustainable development projects.

4.5.3 *Lessons learnt from the Ahafo CDAs*

There are some key lessons learnt from the process in Ahafo:

- Representatives from Newmont indicated that one of the key factors in the successes of the CDAs was that Newmont paid specific attention to working in partnership with and not to replace local government and governance systems. This is further illustrated by the methods the Sustainable Development Forum have developed to appropriate the funds available in the NADeF. To access funds for development projects communities have to make a proposal to the Sustainable Development Forum who will review each case in accordance with the requirements of the CDA and the budgets already agreed. By maintaining a presence for local government and governance systems

in the application process representatives of Newmont indicated that this maintained community ownership of development projects. In addition the function of the Sustainable Development Forum as arbitrator of funding decisions assured consultative and participatory stakeholder engagement as this forum was developed to be representative of the local stakeholders.

- During interviews representatives indicated that the management of the CDA process and the associated development initiatives through the ASDF assured that the process of allocating the funds for development initiatives was regulated by stakeholders. As the ASDF was developed from a range of impacted stakeholders this has maintained an inclusive and participatory management to allocating a budget to separate fields of development (health, education etc). However during interviews Newmont representatives indicated that despite this positive function for the ASDF, due to low capacity in the area, while certain fields of development were easily managed and assumed by stakeholder groups (eg. infrastructure development), other fields were receiving less attention (eg economic development). Representatives of Newmont indicated that due to low capacity in the area tangible development initiatives featuring physical outcomes were fully understood, whereas capacity or process development initiatives were less tangible and therefore less likely to be advocate by stakeholders. Newmont representatives stated that this hypothesis was reflected in the NADeF budgeting which had already allocated much of its budget for infrastructure projects but has yet to spend significant funds on economic development activities.
- Interviewees indicated that the program of stakeholder capacity building prior to the creation of the CDA was vital to the process of free prior and informed consent. This capacity building and awareness raising helped to make sure that there was sufficient awareness of the aims and function of the CDAs. However it was stated during interviews by representatives from Newmont that this process could always be expanded and that awareness and capacity could be raised further.
- One of the major successes of the CDAs was the attempt to divide the mitigation of impacts from development initiatives. Although it was indicated that they believed that these concepts were not sufficiently separated within CDA, it was stated during interviews that the division of initiatives that are in response to physical and cultural losses due to the Ahafo project (impact mitigation), and those that are value-adding and stakeholder driven (development initiatives) is vital to the sustainability of the CDA.

- Both NGOs and representatives of Newmont commented that the role of moderator within CDA development was crucial to the process. It was stated that not only did the moderator manage discussions for the interests of all parties but that where Newmont recognized potentially unsustainable or impractical outcomes the moderator could raise more sustainable solutions to stakeholder groups for discussion.
- Newmont representatives stated that by agreeing the roles and behaviors of all parties and developing a robust grievance management system, they had avoided several protests by local stakeholders that would have delayed the mine construction. These protests were instead managed through the grievance readdress system; improving relations between stakeholders and succeeding in not inhibiting the mine construction timescale. This benefit of CDA application was also noted by the Mineral Commission who stated examples of mine sites owned by Ghana Manganese and others that had experienced large improvements to their community relations after informal CDAs were developed.
- Interviews with Newmont representatives indicated that a key improvement they would make to future CDAs, in light of lessons learnt from the Ahafo project, would be related to the structure and application of the Foundation. Newmont representatives stated that the Foundation would work in an improved and more sustainable way if there had been further provision included for grant making and attracting future funding. This would develop the long-term finance of the Foundation whilst encouraging it to attract NGO tenders for development initiatives funded or part funded by the Foundation. These sustainability measures would possibly also include further provision for a reinvestment clause, boosting funding available for the administrative running of the foundation as well as attracting further funding and soliciting NGO services.

4.6

CONCLUSIONS

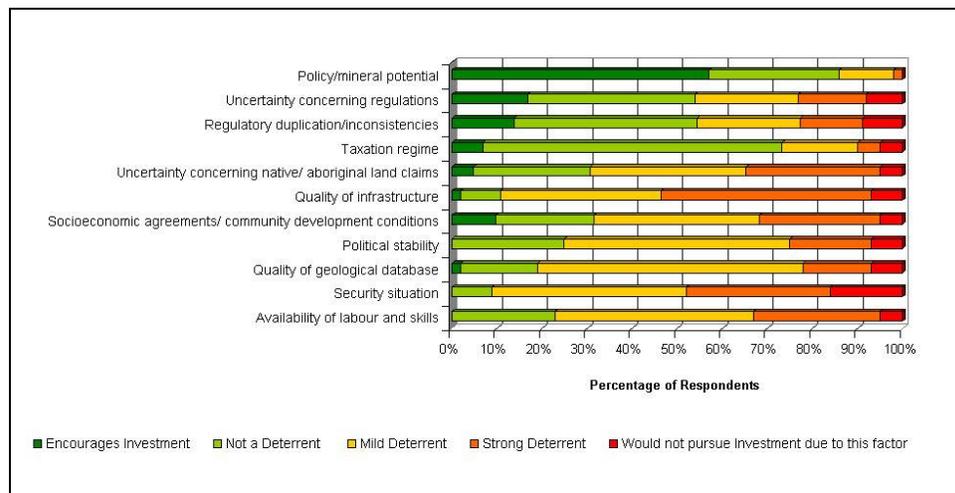
Some overall conclusions can be drawn from the studies in Ghana:

- It is imperative to begin community negotiation and engagement from an early stage and to successfully engage local communities in the CDA process. For example in the AngloGold Ashanti site at Obuasi there has been a history of community tensions and accusations from stakeholders regarding the project. Part of this unrest has been associated with internal politics and problems amongst local community leaders who disagree on details of the CDAs. These disputes have resulted in delays in the CDA activities, impacting its budget and reducing its positive impact to local PAPs.

- According to interviews conducted many actors within the mining sector can see an integral role for themselves in defining CDA models or methodology for any CDA guidance. Ideally this type of model would define principles for a CDA, allowing detail to be developed at a site level. This would ensure that the model CDA retains applicability, relevance and community participation generating positive impacts for all stakeholders.
- All stakeholders interviewed in Ghana agreed that a CDA is most successful where it can be integrated and supported by local, regional and national government, NGOs and can be developed within the context of predetermined development plans. Where there are shortages in this supporting framework a CDA may fail to provide long term and sustainable benefits to PAPs, regardless of its design, content and practice.
- Without sustainability and post-closure linkages to other development plans and initiatives and viable markets it will prove difficult for the mining sector and mine sites to use CDAs as a catalyst for local and regional development after the mine has been decommissioned. The efforts of Newmont and Goldfields within Ghana to include local government within CDA development are an example of one way to begin to engage government and other stakeholders.
- Most stakeholders indicated that while broad requirements for CSR practices or guidance for CDAs may be a success, legislation to create compulsory CDAs would ultimately not provide benefits for impacted stakeholders.
- The role of capacity development of stakeholders in relation to negotiating and agreeing not only the CDA but implementing the development initiatives that it brings cannot be overemphasized. This is particularly pertinent considering the increasingly remote areas in which mine sites are developing and the lack of capacity associated with these remote locations.

Papua New Guinea (PNG) is richly endowed with mineral resources. The country is ranked 13th in the world in copper production and is the 12th largest gold producer.⁴ In 2006 minerals and oil export receipts accounted for 82 percent of Gross Domestic Product (GDP). The latest Fraser Institute *Survey of Mining Companies* reports that 57 percent of industry respondents agreed that PNG’s minerals potential and policy environment positively encouraged mining investment.

Figure 5.1 Companies' perspectives on investment in PNG



Notwithstanding the positive climate for investment, and PNG’s record of eight consecutive years of economic growth, the country’s poverty incidence remains high (at about 50 percent), public infrastructure is generally poor, and human development indicators are low: PNG ranked 148 out of 182 countries in the UNDP’s 2009 Human Development Index.⁵

Widespread rural poverty, and landowners’ ability through customary land tenure to delay or reject proposed mining developments are significant factors inhibiting mining development in PNG. Socioeconomic agreements and community development conditions associated with mining leases represent a deterrent to investment in PNG. Key issues hindering investments include uncertainties over native land claims as well as security concerns.⁶

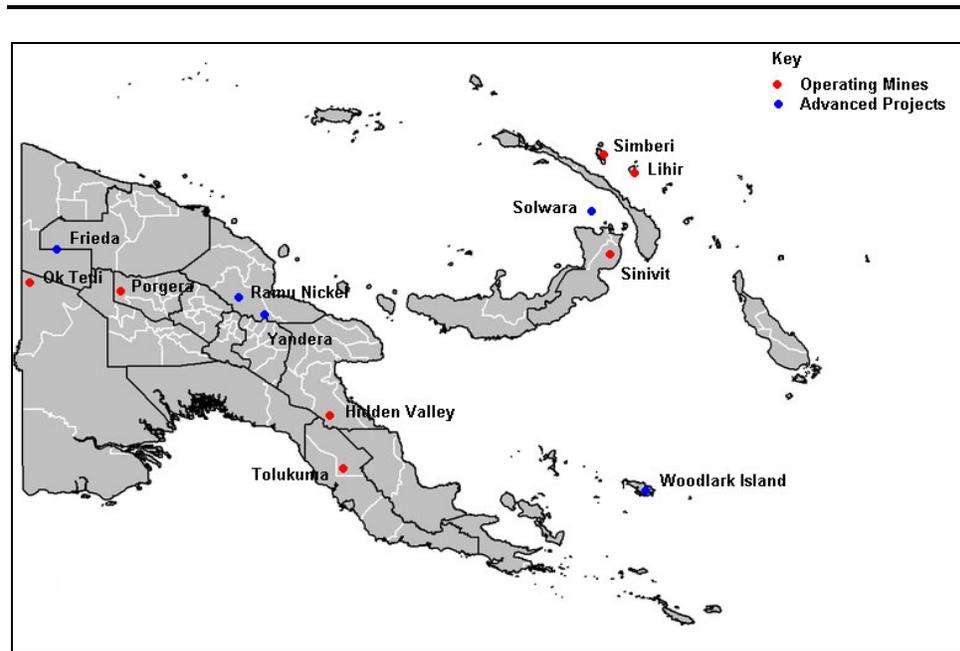
(4) PNG Mining News and Information Website at: <http://www.pngmining.com> accessed 12 May 2010
 (5) United Nations Development Program Website, <http://hdr.undp.org/en/statistics/>, accessed on 12 May 2010.
 (6) McMahon, F and Cervantes, M, 2010, Survey of Mining Companies, Fraser Institute, Vancouver

5.1

OVERVIEW OF PNG MINING SECTOR

The mining sector has played a pivotal role in the development of the PNG economy and society, contributing significant proportions of export income and tax revenue and supporting a wide range of service industries.

Figure 5.2 PNG Mining operation and projects



Modern exploration began in the 1960s with the search for large low-grade copper and nickel deposits. This led to the discovery of a number of very large deposits including the Panguna and Ok Tedi porphyry copper-gold deposits located on Bougainville Island and in the Star Mountains of the Western Province; the Frieda porphyry copper deposit at Frieda River near the border of East and West Sepik Provinces; the Porgera gold deposit in the Enga Province; and the Ramu nickel-cobalt deposit in the Madang Province.

Although the Global Financial Crisis clearly affected PNG mineral exports the economy benefitted from large ongoing development expenditure at a number of projects including construction of the Ramu nickel-cobalt project in Madang Province; the Hidden Valley mine in the Morobe Province; significant capital expenditure at the Ok Tedi mine and a number of planned projects including major expansion of the Lihir mine and the Nautilus Solwara 1 project.

Since the 1970s, the PNG mining sector has been characterized by the development and operation of major capital-intensive enclave projects.⁷ The sector includes one large-scale, world-class copper mining company (Ok Tedi Mining) and two large-scale, world-class gold and silver mining companies (Lihir Gold Ltd. and Porgera Joint Venture), and three other medium-scale gold and silver mining companies. The country currently has eight producing mines:

- Morobe Mining Joint Venture's Hidden Valley and Wafi project operations, located at Hidden Valley and Hamata, near Wau, in Morobe Province. The Hidden Valley project commenced production in September 2009 and exported its first gold at the beginning of October 2009.
- The Lihir gold mine, one of the largest in PNG, is located on Lihir Island in New Ireland Province. The ore body was discovered in 1982 and exploration conducted between 1983 and 1995 when construction of the mine and process plant commenced. Production began in May 1997, and to date the mine has produced more than seven million ounces of gold. Lihir Gold Ltd employs more than 2,000 staff.
- The Ok Tedi gold-copper mine is the largest mine in PNG. The mine is an open-cut operation in which about 78,000 tonnes of ore and 80,000 tonnes of overburden are mined each day from a pit covering about 2.6 square kilometres. Ok Tedi started producing gold in 1984 and copper in 1987. Under the current mining programme, it is expected to close operations by 2013.
- The Porgera gold mine is owned and operated by Barrick Gold Corp, the world's largest gold producer, and located in the Porgera Valley, Enga Province. The mine started as an underground mine (operating between 1990 and 1997). It is now in Stage Five, involving both open pit and underground mining.
- The Ramu nickel/cobalt mine, owned and managed by Metallurgy Co of China, is set to diversify PNG's mineral exports, which traditionally have been limited to gold, silver and copper. The resource at Ramu is estimated at 143Mt at 1.01% nickel and 0.10% cobalt; 50% has been converted to reserve status. The Ramu nickel-cobalt project is due to commence production in 2010.
- Allied Gold's Simberi gold mine is located in PNG's Tabar Islands. Since commencing production in 2008, the Simberi operations have produced 72,609 ounces of gold.

(7) Small scale alluvial gold mining has, however, boomed in PNG as a result of high gold prices in recent years, sometimes in conflict with large scale formal operations such as Porgera. The Mineral Resources Authority recently opened a Small Scale Mining Centre in Wau to train and support small scale mining

- The Sinivit Gold Project is located 50 kilometres south-southwest of Rabaul in the Baining Mountains of East New Britain Province. The mine has indicated resources of 713,000 tonnes at 5.7g/t gold for 132,000oz gold and inferred resources of 340,000 tonnes of 3.2g/t gold for 35,000oz gold.
- The Tolukuma Gold Mine is a small, low capacity, high-grade operation, located approximately 100km north of Port Moresby, on the Owen Stanley Range at an elevation of 1,550 meters. It produces approximately 80,000 ounces of gold per year:

In addition, a number of projects are currently at an advanced stage of development:

- Marengo Mining's Yandera project located 95 kilometres southwest of Madang and within the New Guinea Copper-Gold Belt.
- Nautilus Minerals Ltd. has completed feasibility studies to mine the rich seafloor massive sulphides for copper, gold, silver and manganese, at 1,500-1,600m below the sea surface on the floor of the Bismarck Ocean. An application for a mining licence has been lodged with the PNG government. If given the mining licence, the project will be the world's first underwater mining project. The company aims to be mining Solwara 1 by 2011.
- Xstrata owns eighty-seven percent of the Frieda project which is comparable in scale to Ok Tedi, Porgera and Lihir. Xstrata has completed the scoping study and is currently undertaking pre-feasibility studies.
- RMB Resources Ltd is developing the Woodlark Island gold project. The project is at an advanced exploration stage, with a 1.02Moz project at the pre-production reserve delineation stage.

5.2

LOCAL AFFILIATIONS AND CUSTOMARY LANDOWNERSHIP

Ethno-linguistic and cultural diversity, combined with the isolation of significant populations in PNG's remote and rugged hinterlands, is a critical determinant of development outcomes in the PNG mining sector. With over eight hundred and fifty indigenous languages and at least as many traditional societies, the immense cultural and linguistic diversity presents a major inhibition to political and economic development, service delivery and infrastructure development. The nation's most important mining operations are, moreover, located in remote areas – either in the highlands or the islands – where there are few or no existing government services. Such conditions make it difficult for communities to be served adequately by government agencies, particularly when such agencies have weak administrative and

technical capacities, even in urban centres. Isolated regions tend not to attract the kind of skills and expertise required to plan and implement infrastructure projects under difficult conditions.

Project developers have traditionally been concerned that mining revenues should directly benefit local communities in mining areas, and thereby support operations' security. They have recognized the need to address underdevelopment in isolated communities through support to social projects and infrastructure development as a means both of raising living standards and of ensuring social stability in mining areas. For its part, the PNG Government has essentially sought to manage tensions between local communities and state and national interests by conceding a greater proportion of its mineral revenues to the provincial governments and landowning communities who host the resource projects from which those revenues are derived. While this may be justified by the need to secure these projects against the threat of disruption or closure, the result can be a grossly inequitable distribution of benefits and revenues between different sections of the population.

Landownership & Tenure

Landownership is vested in descent groups, all of whose members are co-owners who have the right to use land but not to alienate it. Landownership is therefore an inalienable right, passed from the ancestors into the guardianship of successive generations. This model of land tenure guards against concerns that local people will be dispossessed of their land because it ties land rights inalienably to identified tribal or clan groups. It enables the state to maintain a stable contract environment while affirming tradition, mediating between mining companies and landowning clans on the basis of the recognition of customary tenure and of the clans through whom customary tenure is exercised.¹

In PNG, discussions of project development are invariably linked to the problem of 'landowner compensation' because of the power of customary landowners to decide what happens on their land.⁸ 97 percent of PNG land is held under customary tenure, meaning that mining activities can be conducted only with the consent of, and in partnership with, traditional landowners (and frequently only by helping to resolve land disputes between competing landowner groups).

5.3 LEGAL CONTEXT OF CDA

5.3.1 Evolution of the Mineral Policy

PNG's current minerals sector policy is still formally based on policy principles established in the immediate post-independence years. The key features are:

- State ownership of minerals;

(8) Filer, C et al, 2006, Pacific 2020 Background Paper: Mining and Petroleum, Commonwealth of Australia

- The utilisation of foreign investment for the development of mineral deposits due to very limited internal capital, technology and expertise; and
- A focus on extracting government revenue from the sector and then employing these funds for broader economic development within the country.⁹

This has evolved through practice, with greater emphasis now placed on the landowner rights and local development. The first large open pit mine, the Panguna mine, commenced production in 1972. The open pit was operated by Bougainville Copper Limited, 19 percent owned by the PNG Government. The operation was forced to close in 1989, however, following armed rebellion by landowners driven by disputes over distribution of benefits, land, environmental impacts and separatist sentiments in the post-Independence period. The Bougainville rebellion was a defining moment in PNG mining development, both in the nature of community grievances and in the community and government response.¹⁰ In establishing the primacy of local over provincial and national interests, it has shaped government, industry and communities' attitudes to major project development. In practice, mining policy has come to be characterised by:

- Greater emphasis on the involvement of local communities in the mineral development process before any mining plan is submitted.
- A marked shift in the distribution of revenue flows from mining operations from central government to local communities and institutions.
- The effective surrender of state sovereignty over mineral resources with the payment of the full value of royalties from the sector to local communities and provincial institutions.¹¹

5.3.2 *The Regulatory Environment*

Mining and exploration is regulated by the Mineral Resources Authority (MRA) under the PNG Department of Mining.

As noted previously, the post-Independence policy commitment to state ownership of minerals, and state use of minerals revenues to fund broader economic development, has largely been subordinated to policies which give priority to local interests over provincial and national interests in mining

(9) Banks, G, 2001, Papua New Guinea Baseline Study, Mining Minerals and Sustainable Development Working Paper 180, IIED, London

(10) Indeed, echoes of the Bougainville crisis could be heard in the legal action that crippled and then closed CRA's Mt Kare operation in 1992; and the lawsuit against BHP taken out by landowners downstream of the Ok Tedi mine between 1994-96; and numerous other examples of direct community action against PNG mining operations. These reinforce Glenn Banks' point that landowning communities in PNG continue to have the power to subvert state and corporate agendas if they feel their own interests are under threat.

(11) Banks, G, op. cit.

development. The role of the State in mining projects has been defined by the dual objectives of delivering a secure contract environment for the project developer while safeguarding the interests of local landowners and institutions.

In terms of the regulatory framework for minerals development, the critical legislation under which the industry operates is the Mining Act, 1992. Section 5 of the Act reinforces the State ownership of mineral resources, stating that:

'all minerals existing on, in or below the surface of any land in Papua New Guinea, including any minerals contained in any water lying on any land in Papua New Guinea are the property of the State and ... all leases and licenses for leases subjects of mining areas are made pursuant to the Mining Act.^{12'}

5.3.3 Compensation Agreements

The act goes on, however, to establish the principle that the holder of a tenement should not enter or occupy land for the purpose of mining until they have reached and registered an agreement with the project landowners on the amount, times and mode of compensation. As soon as the terms of the compensation agreement have been agreed, and before the agreement is executed, the project developer is required to submit a copy of the proposed compensation agreement to the Chief Warden, who will either register the agreement or may request changes. Where the project developer and landowners are unable to reach agreement on compensation, the Chief Warden may determine the amount payable, based on the concerned parties' evidence and having regard for the principles of natural justice. Where a land dispute makes agreement on compensation impracticable, the Warden determines the amount of compensation to be paid by the project developer and the compensation is paid into a statutory trust to be held until the land dispute has been resolved. Where it may be impracticable or inexpedient to assess the full amount of compensation to be paid for loss or damage, the Warden may make a partial determination and defer his assessment of the total claim until a later hearing. Subject to any appeal against the Warden's determination, the compensation agreement becomes a condition of the tenement to which it relates, the breach of which may be grounds for cancellation of the tenement. The compensation agreement is contractually binding on both the holder of the tenement and the landowners.

5.3.4 The Development Forum

Section 3 of the 1992 Mining Act states that:

A Development Forum shall be convened by the Minister before the grant of any Special Mining Lease (SML) to consider the views of those persons whom the Minister believes will be affected by the grant of that SML and shall be

(12) Independent State of Papua New Guinea, 1992, Mining Act 1992 and Regulation

conducted by the Minister according to such procedures as will afford a fair hearing to all participants.

The concept of a Development Forum was initiated in 1988 during negotiations around development of the Porgera gold mine. It marked a change in direction in that landowning communities and provincial governments had not previously been actively involved in negotiations over new mineral

The Development Forum is a process of negotiation between national, provincial and local governments, affected landowners and project developers prior to the issuing of a SML, whose outcomes are typically a tripartite set of agreements between national government, provincial government and landowners, and a Mine Development Contract between the national government and the mining corporation.

developments. The Development Forum grew out of recent experience in the approval process for the Misima mine; the insurrection in Bougainville, motivated in part by the social and environmental impacts of the Panguna mine; and the demands by Enga provincial leaders and local Porgeran leaders for a greater share of mine related benefits and revenues. The Development Forum reflected official acceptance that all key stakeholders should be involved in discussions concerning a potential mine from the time that the developer submitted a proposal for development.

Subsequently, the Development Forum concept was incorporated into the 1992 *Mining Act*, and retrospectively applied to existing mining projects. The Act states that the Minister should invite persons who would fairly represent the views of the project developer; the landowners of the Special Mining Lease (SML) and other leases required; the national government; and provincial government. The Development Forum would provide a forum for consultation, not for modification of the proposed development, and would not provide a right of veto to the various parties, although the Minister could obviously decline to grant a SML. Only those with interests within the mining leases could participate in the Development Forum: neighboring or downstream parties were not included under the Act.

In providing a mechanism for landowner and provincial government participation, the Development Forum has created a highly democratic process for resource development discussions and decision-making and ensured high standards of transparency in identifying benefits and accountabilities. Broadly speaking, Development Forums have not imposed additional constraints on project developer, and national government has generally conceded most in these consultations. They have been successful in securing a greater level of community support for mining development and the MOAs provide at least an opportunity to achieve a greater degree of sustainable development for local communities. The fact that governments have on occasion been willing to commit to more than they can deliver in these consultations, and that the promise of local community development remains largely unfulfilled, is not necessarily the fault of the Development Forum but of a lack of development planning and management capacity in the public and community sectors.

It may be argued, however, that the Development Forum's success in securing community support and in encouraging project development has to some degree been achieved at the expense of rational planning at the national level. The presence in MOAs of large-scale infrastructure projects that are often not subject to any form of feasibility study and are not connected to national planning priorities, sector planning and donor coordination, is symptomatic of national departments' lack of involvement in the planning and management of mining revenue transfers to host provinces and landowners.¹³ Core central government agencies such as the Department of Planning and Rural Development, the Departments of Treasury and Finance, Education, Health, Primary Industry and Provincial Government and Local-Level Government Affairs generally are not active participants in planning, implementing and monitoring the distribution of mining revenues. National government departments are frequently locked into MOA commitments that may not provide the best return on the nation's mineral wealth – and allegations that they are failing to fulfil their MOA commitments are often a reflection of this conflict within national government.

5.3.5 *Memoranda of Agreements*

The Development Forum process has been instrumental in achieving a higher level of participation by local communities, Local Level Governments (LLGs) and provincial governments in mine development. Although convened to discuss proposals for development, their focus to date has been on the distribution of benefits between stakeholders (in terms of services, revenues and infrastructure) from the development rather than the nature of the proposed development itself. The outcomes of the Forum generally take the form of a series of Memoranda of Agreement (MOAs) between landowners, provincial and national governments. These typically define respective responsibilities and obligations, and cover issues such as the provision of infrastructure, the delivery of government services including local staffing, the breakdown of royalty payments, funding commitments, and the provision of equity for local communities and provincial government. They determine how benefits are to be distributed between the various interest groups. MOAs were entrenched in law with enactment of the *Mining Act* in 1992, and became a requisite for all major mineral and petroleum projects.

In general terms, MOAs define:

- Distribution mechanisms and percentages of royalties to provincial institutions and landowners.
- The extent of additional budgetary support to Local Level Government.

(13) Simpson, G., Whimp, K., and Filer, C., 2002, Institutional Analysis: A report submitted to the government of Papua New Guinea under the PNG Mining Sector Institutional Strengthening Project

- The distribution of special support grant between provincial and local level governments.
- Any national government infrastructure development commitments.
- Business development activities and the amounts and timing of any special grants for business development.
- The nature and role of Sustainable Development Foundations established in association with the mining operation.¹⁴

Development Forum outcomes, which define relations and commitments between landowners, provincial and national government, are formally distinct from the compensation agreements, which define relations between landowners and the mining companies. Over time, however, the two have merged to some degree. Companies now play a more active role in Development Forums and are signatories to MOAs.

5.3.6 *Mining Development Contract*

Executed between the project developer and national government, Mining Development Contracts include provisions for infrastructure developments, facilities and roads which are essential to both operations and community; public access rights and company obligations with respect to operation, maintenance and management of agreed infrastructure and services; and local employment, business development and procurement obligations. Mining Development Contracts also set out environmental and closure conditions.

Each Mining Development Contract contains a 'prescribed infrastructure' commitment, specifying the type of community facilities and infrastructure to be constructed by the project developer for general public access. These may include, for example, roads; schools; hospitals or health centres; government administration offices and housing; community facilities infrastructure and services; reticulated water supplies; electric power supply; waste water treatment; and the associated management and maintenance. 'Preferred Area Status' conditions ensure local communities receive preferential treatment in terms of employment opportunities; secondary and tertiary scholarships; apprenticeships; and assistance to business development in contracting, capacity building and support in the establishment of joint venture business partnerships.

(14) Hancock, G, Sharing the Risks and Rewards of Mining, 2002, presentation to the WMMF Workshop on Mining and People, 13-15 March 2002

5.4 SUCCESS AND CHALLENGES OF THE CDA MODEL IN PNG

5.4.1 Revenue Distribution

In the twenty years following opening of the Ok Tedi mine in 1982, four large-scale mining projects generated an estimated (in real terms) at 6.4 billion kina per annum—currently worth about US\$ 2 billion. From this, the PNG national government received 4.1 billion kina in duties, taxes, and royalties, while national employees received 1.9 billion kina in wages, superannuation, and educational costs, and 400 million kina was received directly by institutions or landowners from the host provinces in the form of compensation, donations, and community assistance. The national government returned twenty-six percent of its own share of revenues to host provinces in the form of royalties, special support grants, other mining grants, the Tax Credit Scheme, and dividends on project equity. In addition, under the terms of the government's 'preferred area policy', workers from the host provinces received twenty-eight percent of the benefits obtained by national employees. The net result was that people and institutions in the four host provinces received 32 percent of the total national benefit stream, while the remainder was divided among the rest of the national population or allocated through the national budget.¹⁵

5.4.2 Direct community benefit streams

At the local level, Banks identifies seven categories of monetary flows to communities:¹⁶

- *Compensation:* Cash payments of compensation for the loss or damage to bush or 'improvements' (houses, structures, crops and gardens) provide the most significant flow of cash during a mine's construction phase. As discussed above, compensation is mandated by the Mining Act. Specific rates paid are set out in legally-binding compensation agreements, approved by government, and generally based on standards set by the Valuer-General's office. While not a benefit of the mine, the huge sums involved during construction are generally treated as a new revenue stream by recipients, rather than as recompense for loss. Compensation payments continue throughout the life of the mine, and have given rise to concern as much of the money leads to consumption rather than investment. Banks calculates that six major mines operating between 1973 and 2000 paid a total of over 70 million kina in compensation during this period.
- *Occupation fees:* Incorporated into compensation agreements prior to 1992, these are annual per hectare rental payments for land under a mining lease that take into account the amount of disturbance to the land. The rates paid vary, and the significance of such payments

(15) Filer, C and Macintyre, M, 2006, Grass Roots and Deep Holes: Community Responses to Mining in Melanesia in The Contemporary Pacific, Volume 18, Number 2, 215-231, University of Hawai'i Press.

(16) Banks, G, 2001, op. cit.

likewise varies from one project to another: they are relatively unimportant at Porgera, but substantial at Ok Tedi where much larger leases are used.

- *Royalties:* Mining companies pay royalties of 2% of gross value of production to the State. Since 1974, the State has passed these on to the landowners and provincial governments that host the mine. Amounts paid depend on the value of production, which can vary depending on output and global commodity prices. Initially, in Bougainville, five percent of royalties were paid to landowners, and the rest to the provincial government. Since 1995, Porgera landowners and local institutions have received fifty percent of royalties (with defined percentages designated for SML landowners, the Porgera Development Authority, Porgera Landowners' Association and other local bodies) amounting, in the year 2000 alone, to a total of 7.35 million kina. Royalties paid to the four hundred SML landowners at Ok Tedi were estimated at 3 million kina. At Lihir, royalties to local landowners and institutions were worth almost 6 million kina, split between the LLG (sixty percent) and SML landowners (forty percent).
- *Equity:* Since the late 1980s, landowners have taken direct equity in major mining projects. At Porgera, the Enga provincial government and landowners each hold 2.5 percent equity in the Porgera mine; Lihir landowners hold a 6.8 percent stake in Lihir Gold Ltd through an entity called Mineral Resources Lihir. Dividends generated can take some time to become significant but ultimately can be substantial, and may even dwarf the amounts paid in royalties.
- *Wages:* Mining companies account for roughly six percent of PNG's formal employment sector and generate significant additional employment in both the formal and informal sectors. For example, Ok Tedi Mining Limited employs approximately 2,000 people, but another 3,500 are employed in the supply of goods and services to the mining company, and an unknown number derive part of their income from the supply of goods and services to all these employees.¹⁷ Salaries paid to local employees constitute the most widely spread and consistent flows of money into the local community. They can be substantial: for example, Lihir currently employs 2,100 full-time employees – about ten percent of the working age Lihirian population. Of these, 714 (thirty-four percent) are Lihirian and, overall, 1,911 (ninety-one percent) are Papua New Guinean. Lihirian salaries and wages total over 23 million kina a year (Table 1).¹⁸
- *Business contracts:* These are among the most sought after economic benefits of the development of large-scale mines. Companies are required to assist local business development; give preference to local

(17) Filer and McIntyre, op.cit.

(18) Lihir Gold Limited, 2009, Million Ounce Plant Upgrade Project Environmental Impact Statement

businesses wherever possible; and monitor and report on the value of local contracts issued. Porgera Joint Venture, for example, reported that to the end of 2000, they had issued over 6,000 operations contracts worth 100 million kina to Porgeran businesses. The reality, however, is that many business contracts issued to local contractors hold more prestige than economic value because of the high costs of operating in PNG, cultural constraints on good business practice and relatively inexperienced business owners. Local contractors are frequently obliged, through lack of business capacity, to enter into joint ventures with external companies, further diluting the value of contracts to the community.

- *Social investment:* Mining companies regularly respond to requests for donations from individuals and organisations. PJV over the period 1989-2000 paid out over 8 million kina in donations mostly to individuals and groups across PNG, focussing particularly on the areas affected by their operation. These donations were, however, often in kind rather than cash. Lihir in 2008 paid out nearly 4.5 million kina in community assistance and donations.

5.4.3 *Indirect benefit streams*

In addition to the revenue flows to the landowner communities, national government provides extra-budgetary payments to host provincial governments known as 'special support grants', and support to infrastructure development. Following the Porgera agreements, for example, the Enga provincial government was compensated for the diminution of its own share of the royalties by means of a special support grant from national government, at the rate of one percent of the value of mine production for the first decade of the mine's operation.¹⁹ By agreement, up to twenty percent of this grant may be channelled to the LLG in the mine area and to sustainable development foundations established by the mine developer.

The Infrastructure Tax Credit Scheme provides a further benefit stream and a further transfer of mineral wealth from national government to mining provinces. In the early 1990s the original operators of the Porgera mine proposed a framework of tax rebates for infrastructure development that would be undertaken by developers on behalf of government. It was agreed that up to 0.75 percent of gross taxable income from a mining project could be used for approved infrastructure projects such as schools, roads and bridges and this expenditure deducted from tax to be paid by the project within PNG for other resource projects. (Of course, TCS applies only where operations are in profit. The process involves landowners, provincial government and the developer agreeing on the types of project to be built and submitting the proposals to a committee of national departments. The TCS has mostly

(19) Filer, C and Imbun, B, 2004, A Short History of Mineral Development Policies in Papua New Guinea, Resource Management in Asia-Pacific Working Paper No. 55.

targeted education, health and community services such as water supplies, roads, policing etc. In 2004, Porgera mine spent more than K70 million on TCS projects and Ok Tedi mine K19.25 million on the development of infrastructure such as schools, hospitals, police barracks and air strips.

5.4.4 *Challenges in implementing CDA*

While there are distinct benefits in terms of direct and indirect flow of investment and revenue streams there are certain challenges or socio-economic issues that have arisen as a result of the CDA implementation.

- For local people, success in negotiating their right to benefits may often depend on establishing legal recognition of their customary title and formulating their identity in ways which reflects the State and developer's interests in concluding agreements with clans whose memberships are defined and fixed. Customary tenure is frequently framed in terms of the state's presumption that land is traditionally held by descent groups identified as clans, and this is crucial in legitimizing local land tenure. Project developer and local interests can converge in establishing the 'useful fiction' of clan-based ownership of land in areas where no clans previously existed.²⁰ Far from recognizing customary landownership, the search for 'traditional landowners' can have the unintended consequence of creating divisions and drawing factional lines which may have no basis in local custom. The system encourages local people to define clan identity and land boundaries more strictly. In cultures in which clans may previously have been more fluid and inclusive, and in which various land rights may previously have been shared among neighboring groups, any attempt to secure mining benefits by excluding neighboring people or by seeking to redefine their relationship to the land will be contested, often violently so in PNG.
- A related problem is that the existing system has required the establishment of Incorporated Land Groups (ILGs) to register local landowners and to manage resource rents and incomes, without providing the institutional resources required to ensure those ILGs can play an effective role in the socio-economic development of landowner communities.²¹ Given that, in practice, the ILGs' exclusive function is to collect and distribute mining revenues, it is perhaps not surprising that they are characterised by political in-fighting and devote a disproportionate amount of their time and resources to litigation and legal expenses. Within this, mining communities are represented by local agents who often lack legitimacy in the eyes of landowners; who are subject to widespread mistrust; and, indeed, to allegations of misappropriation in the distribution of mining revenues.²²

(20) Jorgensen, D., op. cit.

(21) Samer, P., and Gawi, R., Mineral Resources Authority, pers. comm., 14 May 2010

(22) Anderson, G., PNG Chamber of Mines and Petroleum, pers. comm., 13 May 2010

- The fact that community representatives – or agents – are nominated with no automatic mechanisms for revisiting the appointment creates a group of people with very few requirements for accountability, transparency or communication with their constituency. It also tends to present a block to the emergence of younger, better educated elite who might be more disposed to challenge the existing representatives.
- Compensation agreements and MOAs tend to fix certain individuals as representatives and, while these individuals may have widespread community support at the start of the mine operation, the rapid, profound, complex and unevenly distributed changes that accompany mine development may necessitate leadership change which is not easily accommodated within the agency system.²³ In the PNG highlands, leadership is a process rather than a position and must be regularly re-established. The formal appointment of clan agents has effectively prevented the emergence of a more indigenous, and perhaps fairer, form of representation and accountability. While this represents a serious social risk to mining operations, there is in practice very little that companies can do to interfere in the distribution of revenues within communities: any such attempt would, as Banks has argued in relation to Porgera, be outside their legal scope, and would be strenuously resisted by landowners and likely to attract allegations of paternalism.²⁴
- While revenue flows into PNG's mining communities have increased dramatically over the past twenty years, the concomitant improvement in socio-economic conditions is far from evident. The central issue, however, is less to do with the total amounts of money received by local communities than with the ways in which the funds are employed. Local and provincial level governance is severely constrained by lack of adequate planning and management capacities and resources; lack of staffing; and lack of the infrastructure and logistical resources required to deliver services to local communities. Decisions regarding the utilization of project revenues are often not transparent and government funds, which should have been allocated for the development of infrastructure and social services, are often not available for landowner communities.²⁵ Within communities, existing low levels of education, low levels of capital accumulation and limited experience of the broader worlds of employment and administration – combined with the continuing flow of resource rents – all tend to reinforce existing patterns of dependency in communities who are poorly equipped to challenge existing conditions or to plan a path towards a more sustainable form of development.
- It remains a major challenge to ensure effective long term management and transparent application of accumulated revenues in the absence of a more highly developed sustainability planning framework at the

(23) Banks, G., 2001, *op. cit.*

(24) Banks, G., 2006, Mining, social change and corporate social responsibility: drawing lines in the Papua New Guinea mud, in Firth, S. (ed.), *Globalization, Governance and the Pacific Islands*, Canberra: ANU Epress.

(25) Anderson, G., *op. cit.*

provincial, local and community levels.²⁶ There is very little accountability in the system and few audit procedures in place to ensure that benefits accrue to mine-affected communities, and there is little evidence that the revenue from mining has provided sustainable long-term benefits to the host communities or provinces.²⁷

- Mining companies are pressured to become much more involved in local-level governance, supporting or imposing their own community administrations; sponsoring local planning processes and infrastructure development programmes.

5.5

LIHIR GOLD MINE

The Lihir gold mine is located on Lihir Island in New Ireland Province, approximately 700 kilometres north-east of the PNG capital of Port Moresby. Lihir is roughly 22 kilometres from north to south and 14.5 kilometres from east to west at its widest points. In 1992, prior to the mine development, Lihir was largely undeveloped with little infrastructure; subsistence agriculture was the principal occupation of most Lihirians, supplemented by some cash crops such as copra. The population of Lihir Island in 1992 was estimated to be 5,500, with a further 1,600 people living on the other three islands in the Lihir Group; today, the population is approximately 18,000, including some 3,700 people from other parts of PNG and overseas.

The Lihir Island operation produced 7.09 million ounces of gold between the start of operations in 1997 and the end of 2008.²⁸ In 2008 LGL approved capital investment of US\$783 million in a major expansion of the Lihir Island process plant to increase annual gold processing capacity to approximately one million ounces per year. The project will increase annual throughput to a maximum of around 11 to 12 million tonnes, lifting gold production by up to an average of 240,000 ounces per year over the remaining life of the mine. Mining is scheduled to continue until 2021 at current rates, with processing of lower grade stockpiles to continue beyond 2030.

In 2008, LGL's operational expenditure in PNG was US\$425 million, including US\$84 million in employee wages.²⁹ The proportion of operating expenditure spent within the project region provides economic stimulus in landowner communities. In 2008, almost US\$187 million worth of contracts was awarded to local suppliers, including US\$93 million to landowners and landowner joint ventures.

(26) Hancock, op.cit.

(27) Enterprise Research Institute, 2003, Papua New Guinea: A Private Sector Assessment, a report prepared for the Asian Development Bank under RETA 6037: Private Sector Development Strategy for the Pacific

(28) Lihir Gold Ltd Website

(29) Lihir Gold Ltd., 2008 Sustainability Report

5.5.1 Socio-Economic Development

The initial agreements to develop the Lihir mine included a comprehensive set of compensation and development agreements incorporated in the 1995 Integrated Benefits Package (IBP). The IBP was signed by the national government, New Ireland provincial government, Nimamar LLG, the Lihir Mining Area Landowner's Association (LMALA) and LGL. LGL agreed to provide funds worth US\$22 million for the development of social and technical infrastructure on Lihir Island, with an average annual compensation package, including other payments, of approximately \$1 million per year.

The Anitua group is the commercial arm of the Lihir Mining Area Landowners Association. LGL contracts with thirteen companies within the Anitua Group.

LGL's 2008 Sustainability Report highlights Niolam Catering Services, part of the Anitua Group, as evidence of successful local economic development. The company was established as a landowner joint venture company, and in 1995 awarded the contract for operation and management of catering at the first camp at Lihir Island. Niolam Catering Services has continued to grow and has won contracts throughout PNG, including with the Defense Force, Hidden Valley Mine and Kainantu Gold Mine. Niolam Catering Services is now a diversified national company, which is one-hundred percent Lihirian owned and employs more than 1,500 people, most of them from the local communities in which LGL operates.

The compensation agreement was based on four main concerns throughout the life of the mine: destruction, development, security and rehabilitation. The IBP included compensation for damage to, and loss of, land, village relocation, royalties for landowners and trust funds, mine closure and funds for future generations for Lihirians. Under the IBP, 20 percent of the royalties went to landowners in the SML; 30 percent to Lihirian community development (administered by Nimamar Development Authority (NDA), a local government body); and 50 percent to the provincial government.

A delegation from the World Bank's Extractive Industry Review in 2002 found that the mine had brought significant contributions to the economic development of Lihir Island. The Review team found that the community of Lihir enjoyed better infrastructure, health facilities, and educational opportunities since the development of the mine.³⁰ LGL had contributed over US\$10 million during the period 1997-2002 toward village infrastructure including new housing, provision of water and power supplies, and meeting halls and churches. The majority of landowners had benefited from rental fees on their lands; indeed, by the end of 2000, a total of US \$1.7 million in royalties was paid to landowners.

Landowners had created an umbrella firm, the Lakaka Group of Companies, with local shareholders and outside parties to provide goods and services to the mine. Members of the small business associations under the umbrella company had been given preference over non-Lihirian firms. Sixty formally, structured businesses, owned and operated by locals, were awarded

(30) Extractive Industries Review, 2002, Report on Project Visit to Papua New Guinea.

construction contracts totalling US\$50 million by the end of 1996, but this declined following completion of the construction phase. The mine's Business Development Office provided support to local SMEs in developing sustainable commercial opportunities by providing interest-free loans. Contracts issued to local businesses in 2001 amounted to \$5.4 million.

However, the flow of benefits appeared to have contributed to some divisions within the local community and to a range of social problems. Some landowners who received proceeds from the compensation fund had failed to share them equitably with their clansmen, diluting benefits to the collective living standard of the community. As a result, social tensions prevailed on the island and major conflicts occasionally occurred between the haves and have-nots. There had been a notable increase in alcohol consumption in the community, which has led to an increase in alcohol-related crime and other social problems including the breakdown of marriages and traditional relationships. Reports also suggested the erosion of traditional community values, demonstrated by a loss of respect for elders and changes in the customary patterns of mutual support and exchange. The majority of landowners had abandoned farming and their children had lost interest in subsistence farming. The EIR suggested, in addition, that there was a need to break the cycle of dependency since Lihirians had come to expect the company to provide for all their needs.

5.5.2 *Lihir Sustainable Development Plan*

The IBP was to be reviewed every five years. Following the first review in 2001, the IBP was not deemed to be meeting the goals of the Lihirian landowners, in part due to the absence of a plan outlining how its development objectives were to be met. The IBP was re launched in 2007 as the Lihir Sustainable Development Plan (LSDP), reflecting a desire to shift focus from compensation to planning for sustainable community development in partnership with local level government and the community leaders. . These agreements are designed to guide progress towards the Lihirian community's vision of achieving self reliance and financial independence, based in part on the community's equity, and developing governance structures and management capacity, in the project. The LSDP essentially refocuses the purpose and trajectory of the IBP towards long-term future outcomes.

The LSDP was designed and planned by Lihirians through a highly participatory process and critical evaluation of the performance of the IBP. (The LSDP planning committee determined that the opportunities presented by the first 10 years of LGL operations had been 'wasted'.)³¹ Where LGL's initial approach had been to manage its financial exposure, the Company's recognition and endorsement of Lihirian aspirations for self reliance and

(31) Eagle, M., 2008, Lihir Integrated Benefits Package: A Case Study, presentation to the Foundation for Development Cooperation

financial independence ultimately enabled consensus on the need for the establishment of the LSDP as a twenty-year plan subject to implementation targets and continuous review. Through the LSDP, LGL will provide one hundred million kina over a five year period in equal annual instalments; a one off seven million kina investment capital for SML landowners; and additional support to infrastructure and utility development.

Table 5.1 *Mine related revenue and benefits to Lihir community in 2008*

				Description	Value (kina)
Nimamar Government	Rural	Local	Level	Royalties	10,872,691
				Special support grants (estimated)	3,000,000
Contracts				Landowner contracts	187,736,664
				Landowner JV contracts	51,815,168
				Royalties (block holders)	7,248,460
				Economic plant compensation	426,427
				Noise, light and dust	43,176
Direct payments				Land use rental	2,268,642
				Community assistance and donations	4,458,737
				Integrated Benefit Package commitments	16,448,966
				Lihirian salaries	23,220,536
Village development				Grants (Landowner association)	987,939
				Village development scheme housing	2,811,402
				Village development scheme grants	1,377,019
				Integrated Benefits Package infrastructure and utility capital projects	35,274,210
Total					348,090,037

Source: Lihir MOPU Environmental Impact Statement

The focus of the LSDP is to change the way payments, projects and programs are conceived and rolled out, to assist in creating more sustainable value for communities (in savings and investments). The LSDP includes agreements in the areas of capacity building, trust fund payments, compensation, training and localisation, infrastructure and utility development, town and village planning, commercial and contractual management opportunities, and social well-being programs. The challenge for LGL has been to improve the delivery

of these programs which previously had failed to be achieved in a timeframe that met the expectations of the Lihir community. The key change in the LSDP, along with the implementation of a refocused financial plan, has been to shift ownership of programs, which was entirely with the company, into a multi-stakeholder planning, monitoring and management committee. This implies substantial capacity building for Lihirian institutions and increased focus on transparency, good governance and accountability. The plan is to create the necessary long-term capacity within the community to oversee and manage delivery of all community projects from drawing board to commissioning, supporting the community's aspiration for sustainability through self-reliance.

The challenge for the LSDP will be to effectively harness the level of funding available through the mining-related agreements such as the LSDP to ensure better service delivery and financial independence beyond mining.

5.6

CONCLUSIONS

Some overall conclusions can be drawn from the studies in PNG.

- While the Development Forum process appears to offer an unparalleled level of democratic decision-making in mining development, government has upheld the primacy of local over national interests in the distribution of mining revenues, and major mining projects have delivered enormous sums into host communities, there is little evidence that mining revenue has provided sustainable long-term benefits to the host communities or provinces. PNG's mineral wealth has not been successfully applied to the creation of a more diversified national economy, nor has it served to reduce the country's dependence on foreign aid.
- The Development Forum concept demonstrated an innovative, and potentially highly effective, approach to questions of resource distribution. The Forum process has not been so effective at linking the distribution of mineral revenues to the establishment and maintenance of institutions that can plan and manage their expenditure. Ultimately, it could not overcome entrenched problems in local and provincial level governance or in community organization, representation and capacity. Similarly, it could not in itself generate consensus over, or ensure consistent application of, the principles to govern the internal distribution and management of the government's mineral revenues.
- It has been suggested that the isolation of the Development Forum from broader policy and planning frameworks has encouraged participants to treat the mineral wealth derived from each new mining project as if it were a lottery prize. While participants have argued over the immediate division of the spoils, they have generally neglected the question of how to sustain benefits beyond the point of mine closure.

- Moreover, the priority given to local over broader regional or national interests in the distribution of royalties, equity and infrastructure development, has tended to promote inequitable patterns of development and diverted resources away from broader development needs and priorities. Inevitably, a small number of scattered mining enclaves would still tend to widen the gap between rich regions and poor regions unless national government can use a significant portion of mineral revenues to achieve the opposite effect.³² It may also be argued that, by reinforcing the enclave nature of mining projects in PNG, mining policy has contributed directly to the massive problems of in-migration which limit operational security and impact community well-being in mining areas; and has significantly reduced prospects for sustainable economic development in mining communities following mine closure.
- Within mining areas, there is increasing recognition that the necessary institutional structures and capacity simply do not exist to translate revenue streams into longer-term sustainable forms of development.
- Huge cash-flows into previously subsistence-based local economies have inevitably transformed lifestyle and social norms in host communities. It may be unfair to expect remote and isolated communities to establish the governance structures and institutional capacities required to ensure effective and transparent distribution of resources and to apply revenues to improve community health, livelihoods and living conditions.
- It is, however, reasonable to expect government and industry to apply the lessons learnt over the past twenty years. The LSDP has provided some direction and similar initiatives have been taken elsewhere. The forthcoming review of the Porgera agreements will provide an opportunity to address three particular areas which could significantly improve the equity and sustainability of development outcomes at the local level:³³

(32) Filer, C and Imbun, B, *op. cit.*

(33) Samer, P., and Gawi, R., *op. cit.*

6 CASE STUDY: ARGENTINA

The Argentinean context is interesting because of the recent development of industrial mining in the country and the province focused government involvement that creates some mining friendly regions and others where mining is simply prohibited. This case study looks at Barrick's Veladero project, thus introducing the perspective of a world class mining company with a strong sustainability focus and the perspective of one of the first large-scale mining endeavors in Argentina. Veladero's social area of influence includes the municipalities of Iglesia and Jáchal in the San Juan Province and offers one of the longest and richest histories of community relations from which lessons may be learned.

The study also looks at the legal context for mining activity and CDAs, as well overall mining-related social conflict.

6.1 HISTORICAL CONTEXT OF MINING ACTIVITIES IN ARGENTINA

Unlike Bolivia, Chile, and Peru, major mining activities in Argentina were not developed until the last decade of the 20th century. Two of the principal reasons for this were the overall relegation of an expansion in the extractive sector due to agricultural development priorities, and the military control of land fit for exploration and exploitation.³⁴ Additionally, failure to attract foreign investment, stalled projects, low domestic production, and a small demand for labor were elements which further limited mining activities in Argentina until the beginning of the 1990s. Contrasted with Chile, which has similar geology, it is evident that changes in the Argentinean legal framework for mining investment were fundamental in bringing about the recent boom:

*"The mining sector in these countries underwent a massive process of reform. The role of legal reform has been to reduce both real and perceived risks by designing legal safeguards, and to enable an environment appropriate for investment (World Bank, 1996). In this regard, Chile first and Peru later, as well as Argentina, Bolivia, and other countries in Latin America, drafted highly competitive legal frameworks for mining. Their aggregate features have come to be known as 'the Latin American Mining Law Model' and the World Bank has recommended the adoption of this model in processes of mining sector reform in developing countries. (...) The revitalization of the mining industry in Argentina took place in the context of the profound liberalization of the economy promoted during the 1990s. A new highly competitive fiscal and legal framework for mining investment was the key to transformation of Argentinean mining."*³⁵

(34) Velasco, Pablo (1995). The mineral Industry of Argentina. United States Geological Services.

(35) Bastida, E., R. Irarrazábal and R. Labó (2005). Mining Investments and Policy Developments: Argentina, Chile and Peru. CEPMLP International Mining Seminar. London.

Large scale private investment in mining commenced in 1992 as a result of this legislative strategy, which helped to further develop a set of mining investment laws³⁶. As a result of the new legal framework, large scale operations hastily commenced and the mining sector in Argentina went from an estimated 0.3% of GDP in 1994 to around 4% of the 2009 GDP. Production value increased four times in the first decade and over a 1014% increase of total investments (eight times) was seen in the second decade up to 2008. Mining currently employs 256,000 people in direct and indirect job positions, mostly in remote and underdeveloped areas of Argentina. Additionally, joint efforts and Mining Integration Treaties were generated between the governments of Argentina, Bolivia, and Chile for cross-boundary extraction locations.

6.1.1 *Legal Context of Community Development Agreements*

Argentina is organized in the form of a Federal State whereas according to article 121 of the National Constitution, each province retains all power not specifically delegated to the Federal Government. Therefore, provinces own and control the natural resources in their territories and dictate the relevant governing laws. The Federal Government has enacted a Mining Code to which the provinces may decide whether or not to subscribe. Alternately, provinces may have their own codes for mining sector procedures.

Overall, the environmental legal framework for mining in Argentina lacks specific technical guidance and monitoring measures, or specific regulations regarding social impacts. There is no legal requirement to develop CDAs and public participation is not contemplated beyond the EIA approval processes. Some companies in Argentina's mining sector, especially those that have a global footprint, have therefore turned to compliance with international best practice for risk management purposes.

Applicable environmental legislation on public participation requires authorities to provide information to whoever requests it concerning environmental provisions in a mining development project. EIAs are usually not publicly available, although each province may introduce public participation mechanisms if they do not contradict the National Laws. Although some provinces in Argentina have provided statutes for public hearings in development projects, it is not mandatory to pay due regard to public and community comments. Public participation is widely limited to a formality instead of an actual community engagement or communication strategy. Additionally, public disclosure is not a regulated activity, therefore undermining any means of social participation.

(36) Among others, these include: the main Mining Investment Law (N° 24196), the Mining Reorganization Law (N° 24224), the Federal Mining Agreement (N° 24228), the Mining Modernization Law (N° 24498) and the Law to Update the Mining Investment Law (N° 25429).

In 2004, Argentina introduced its National Mining Plan; which, among other things, served as a framework within which to support public disclosure as part of a larger effort to promote the mining industry. This was the country's first attempt to officially address social management in the mining industry through actions such as community involvement programs, technical assistance for small agricultural producers and artisanal miners, and communication schemes like the participation of mining companies in national fairs and the participation of government and industry representatives in mining expositions. There are six main elements in the National Mining Plan:

1. Define a national policy on mining priorities;
2. Support and maintain predictable investment scenarios for mining companies;
3. Enhance the national mining production model;
4. Encourage regional integration of the mining sector; and two social-related goals:
5. Build relationships between mines and communities; and
6. Democratise public information on mining.

Both of these last two elements sought to foster a basis on which a social legal framework could be built at the province level for the mining industry, including guidelines for:

- social management plans;
- job creation and training programs;
- indigenous peoples development;
- periodic informational meetings;
- local suppliers capacity-building;
- urban studies and spatial planning;
- support of local sports and culture; and
- free public access to information sources.

6.1.2 *Social Unrest in Context of Mining Activities*

Along with the prominent development of Argentina's mining sector in the early 1990s, local and regional social resistance groups against large scale mining exploration have emerged. Civil society movements oppose the potential environmental and social impacts of mining activities; particularly those related to water pollution and associated risks for communities and ecosystems. Some of the principal opposing stakeholders include: NGOs, the media, academics, and even political parties.

Public concern over several issues besides water pollution has also been the source of opposition towards mining activities in Argentina. These issues include:

- habitat destruction;
- human health risks;

- over-exploitation or destruction of natural resources (including groundwater and glaciers);
- scale of projects;
- fiscal exemptions and/or low mining royalties;
- corruption and influence over politicians or political processes and decisions;
- perceived prioritizing of multinational private interests above national public interests; and
- limited contribution to local development.

Around 70 citizen assemblies throughout Argentina grouped together in 2006 to form the Citizen Assembly Union, formerly known as the Mining Affected Communities.³⁷ As a result of pressure from these type of social movements and demands, seven provinces have adopted legislative measures to limit mining activity (i.e. ban the use of chemical components like cyanide) or prohibit it altogether (i.e. outlaw open pit mining) in their territories. Although provincial government support is a changing variable, political endorsement of mining companies or projects in certain provinces has generated additional community opposition.

Esquel Case

One of the most representative examples of mining-related social conflict in Argentina was the Esquel case, which gained international attention. Meridian Gold, the owner of the Esquel Mine, was confronted in 2002 and 2003 with a series of protests and a public referendum against their operation. Referendum results showed that over 80% of the local population did not agree with the presence of the mine and opposed it because of environmental and social concerns. As a result, the provincial government of Chubut banned open pit mining and the use of cyanide. A similar prohibition was implemented in the neighboring province of Río Negro, also due to civil opposition.

6.1.3 *Challenges that could be faced if CDAs were mandatory*

The stakeholders interviewed indicated that there could be challenges faced if CDAs became mandatory in Argentina. According to a mining expert all global mining activities, and specifically in the case of Argentina, are going through a rather complex situation involving “*sector unrest and anti-mining movements*” that are caused by a set of key issues. These may, in turn, have repercussions on the viability of mandating the adoption of CDAs at a national level.

(37) Svampa, M., M. Sola Álvarez y L. Bottaro (2009). “Los movimientos contra la minería a cielo abierto: escenarios y conflictos. Entre el “Efecto Esquel” y el “Efecto La Alumbrera”.” *Minería Transnacional, narrativas de desarrollo y resistencias sociales*, pp: 123-180. Buenos Aires.

- Argentina already has three percent cap on royalties therefore mandatory CDAs could appear to the mining sector to be an additional layer of tax implemented on industry. Because industry already pays taxes on revenues etc to central government buy-in from the mining sector for what is perceived as a 'stealth community development tax' could be difficult.
- Specifically in Argentina (and other Latin America and Caribbean countries) direct benefits from mining royalties do not usually represent province investment and are lost in the administrative structure, never reaching the public and communities;
- Making CDAs mandatory in Argentina would necessarily involve the provincial governments, so transparency of the process would be critical for public acceptance and there would need to be good monitoring and communication of how resources are invested in the community
- CDAs remain largely unclear to mining companies, as many still believe community benefits translate to local donations. Companies do not take into consideration that these types of benefits should not result from philanthropy but rather from the mining operations' supply chain development.
- Mining companies in Argentina, especially smaller ones or those without much international presence may directly oppose any government measures that they interpret as simply representing an additional cost.
- Mandating CDAs from the earliest stages of a mining project in Argentina could run into obstacles if there are claims of this being an additional legal loop or permit that needs to be secured and the companies that were attracted to Argentina's industry-friendly reforms in the 1990's perceive this as some sort of reversion of this 'easy project start-up' scenario.

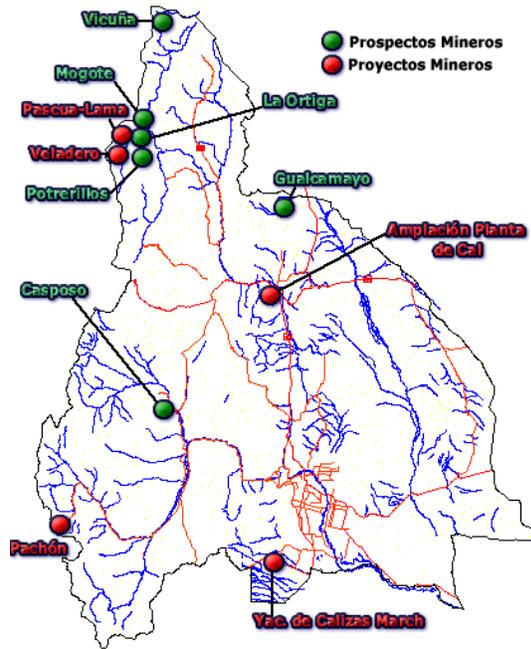
6.2 *VELADERO PROJECT*

The Veladero gold mine in San Juan Province is located 10 kilometres south of the Pascua Lama Barrick gold mine that sits on the border between Argentina and Chile. Veladero is based at elevations of 4,000 to 4,850 meters above sea level and 350 kilometres northwest from the city of San Juan.

San Juan is one of the most developed provinces in Argentina regarding mining, both traditionally and in the context of the recent boom. Non-metallic minerals production was the basis for the province's development for over half a century when local small and medium-sized mining activities were predominant. After the mining legislation reform in the early 1990's, San Juan soon became a major centre for mining sector development in Argentina, attracting important large-scale projects due to a strong political commitment from provincial authorities to foster mining investment. This commitment translated to mining infrastructure (roads and energy requirements) and a focus on metallic ore extraction. The most important mining projects (red) and

prospects (green) in San Juan are shown in the following map: Veladero, Pascua Lama, Pachón, Gualcamayo, and Vicuña, among others:

Figure 6.1 Mining in San Juan Province



The project EIA was approved by local authorities in 2003, and production commenced in 2005. Veladero is an open pit mine with an area of 130 km² of gold and silver bearing ores with an estimated life cycle of an additional 14 years.

Barrick has developed specific action plans regarding community programs for the Veladero project, mainly concerning health, education, agriculture, tourism, and culture, all key issues to the development of the San Juan Province. A local supplier development plan has been implemented as well. Among the local investments, Barrick has developed a small wind power generator to cover up to 20% of the electric demand of the mine's operations. These are not signed CDAs like Ghana or PNG but were drafted with involvement from the affected communities and other stakeholders and therefore have their buy in.

In earlier periods, Veladero encountered and resolved lawsuits regarding environmental and social impacts. The mine is located in an ecologically-sensitive zone near a natural protected area; as well as near glaciers and drinking water sources. This delicate location has resulted in the mine receiving increased attention for potential risks to nature or human communities. After having implemented continuous social conflict resolution policies, Barrick consulted and communicated with key stakeholders, helping

Veladero to enforce its commitments with sustainable practices and enhance its community development agreements.

So far the CDAs that exist with communities are small agreements that have been signed with sub groups like farmers, specific villages. These agreements are for a purpose like investing in sanitation projects or training/capacity building. No large scale CDAs have been formulated with communities that are more plan/development oriented or geared towards partnership models. Barrick is now in a process of formulating a Community Investment plan. This is being done in consultation with the affected communities. Eventually the provisions of this plan might evolve into structured CDAs.

Barrick's example in Veladero will enable further analysis of the strengths and weaknesses of their CDAs and current efforts to fulfill their role as an integral part of the sustainable development of the San Juan Province.

6.2.1 *Successes of the Efforts*

This section outlines the most successful elements of the community development plans based on what was observed in the Veladero project. Veladero's social management team recently began to use the IFC Performance Standard as references for international best practices in community development. The main successes perceived relate to:

- Having clearly established lines of action as part of the project selection criteria. In the case of Veladero, the four community development areas are education, health, culture, and productive activity;
- Ensuring that all community investment projects seek to balance the provision of infrastructure or capital with the provision of aligned training, capacity building, and technology transfer;
- Providing direct and integrated assistance in key social development areas, such as drinking water supply;
- Prioritizing projects that benefit sectors that are not positively impacted de facto through direct and indirect economic relations with mining, such as the agricultural sector;
- Investing resources in stakeholders that demonstrate a real interest in development and creating partnerships with the mine as to ensure that projects are seen through to completion;
- Maintaining a well-founded reputation for always responding, regardless of whether positively or negatively, to any community demands, inquiries, or suggestions;
- Ensuring that all projects have a basis of prior feedback from communities regarding their perceived needs;

- Offering a ‘human face scale’ of interaction through local residents working in representation of the mine; yet avoiding becoming too personally involved in each single project or community as to avoid dependence;
- Building strong ongoing development alliances with key community stakeholders—such as hospitals, libraries, and schools—as a public image management mechanism;
- Focusing on projects that address impacts from mine. For example, capacity building for health professionals to treat trauma resulting from greater road traffic and accidents;
- Promoting cross-sector collaboration at every project. For example, combining agronomic technical assistance for tomato production with sun-drying technology for value adding and involving local governments and businesses to commercialize end products;
- Seeking time-phase congruence in the components of community development projects. For example, providing computer training to local teachers and community administrators and then providing computing equipment to schools and community groups; and
- Serving as a catalyst and facilitator for the creation of self-sustaining community development networks. For example, providing mandatory training and offering periodic opportunities to meet for a group of micro-enterprises that serve as local mine suppliers.

6.2.2 *Key Challenges*

There were challenging elements of the community engagement and development in the Veladero project. A strong cultural expectation of benefaction is still widely perceived in the region, despite the fact that Barrick has made it a point to distance itself from this modus operandi and accustom communities to deal with them in a different tenor. The main challenges relate to:

- The need for more constant dialogue with community stakeholders, allowing for more strategic interactions and not just issue specific discussions;
- The lack of diversity in depth and type of information offered on the community development goals of the company for the region in order to assure more wide-spread access to the mine’s social agenda and promote greater interaction through projects;
- The difficulty of maintaining a proper balance between local engagement at a province-level, municipality-level, and community-level; with each sort of interaction demanding its own strategic approach and constant attention;

- The tendency to act quickly on community demands without necessarily substantiating projects fully on a solid social baseline that indicates real development needs in the region; and
- The added complexity of working with community groups and stakeholders that are not initially drawn to collaboration with mines.

6.2.3 *Lessons Learnt*

There are some key lessons learnt from the Barrick/Veladero case study in Argentina. These, along with the insight offered by the successes and challenges discussed in the above sections, offer a valuable perspective for how CDAs may work best for the global mining sector.

- Community development works best when it is based on robust stakeholder relations. Prior and continued interaction with communities in order to design and carry out projects is a crucial component of success from both a sustainable development results perspective and from a public image results perspective. The key to these interactions should be a focus on the shared and common interest of achieving real social and economic development in the area along with strong environmental protection;
- When mining is new to a country or region, as was the case in Argentina when Barrick's Veladero project came to be, there is a great opportunity to introduce the concept of sustainable and responsible mining so that it builds in the collective perception in parallel to that of the mining sector in general. There was a widespread sense in San Juan that the dialogue with Veladero mine representatives always emerged within a framework of sustainable development and that has been crucial in avoiding conflict and promoting collaboration;
- Community initiatives and CDAs should always be treated as works-in-progress, ensuring that there are mechanisms for project revisions based on past successes and failures and that redesign is incorporated into the planning from the start.

6.3 *CONCLUSIONS*

The Argentinean context is unique in that it offers a Latin American perspective that is typical in terms of the legal framework, institutions, and mixed perception of direct foreign investment. However, the newness of the mining sector here also offers opportunities to see how both communities and companies have in many regions learned from the experiences in nearby countries and sought to avoid conflict and achieve mutually beneficial collaboration.

The overwhelmingly expressed opinion in San Juan, Argentina was that an international CDA standard for the mining sector would be a very good contribution.

Even if it only adds a well-founded opinion to debates on the matter, it would foster discussion where it may not currently exist. But beyond this, it would offer guidance to province-level authorities keen on addressing the issue of increasing the benefits left behind by mining operations in the communities in which they are established and would reduce the variability of the governmental stance on CDA through the various political cycle.

7 FINDINGS OF THE STUDY

7.1 KEY FINDINGS

The main finding of this study from secondary literature review, primary field studies and interviews with stakeholders can be divided into two categories:

1. Findings on the context and conditions influencing the outcomes and impact of CDAs
2. Findings on key building blocks
 - Timeframe and process
 - Stakeholder participation
 - Capacity of participating stakeholders
 - Community identification
 - Funding and expenditure requirements
 - Obligations and responsibilities
 - Grievance and dispute resolution mechanisms
 - CDAs and short medium, long term, local development plans
 - Accountability and transparency
 - CDAs and legal requirements

7.2 FINDINGS ON CONTEXT AND CONDITIONS INFLUENCING CDA

7.2.1 Differing views on regulated versus non regulated CDAs

Government authorities and NGOs tended to support a proposal for regulation of CDAs. In contrast, most of the private sector representatives were not in favor of regulations. None of the interview respondents (even those in favor) gave specific reasons to support CDA legislation but many indicated that they would support the development of broad guidelines or recommendations. Interestingly there were contradictions in the opinions expressed and some of the reasons cited against regulating CDAs were also cited as reasons to regulate.

The main reasons cited in support of CDA regulations include:

- Mandatory CDAs will garner commitment from the mining sector towards community development especially in countries like Argentina where the mining sector is in the early stages of development;
- Mandatory CDAs were seen as a vehicle to improve the quality and quantity of best practices in community development. If CDAs become mandated in legislation the mining sector would be provided with an opportunity to monitor and contrast different examples of CDAs increasing the best practice methodologies within the sector as experience develops and lessons are learnt.

This would provide greater clarity for the mining sector in areas/countries where the risk profile is high and where there are few boundaries and guidelines.

- Lessons learnt in PNG, particularly the response to unrest at Bougainville, illustrated how the development of mandatory CDAs has provided some successes. The development of CDA regulation has emphasized to the mining sector the need to involve communities in the mine development process.
- The example of PNG illustrates how regulating CDAs can institutionalize concepts of best practice within the law, obliging the mining sector to follow these procedures. Stakeholders cited the concept of the Development Forum as an example of best practice regarding engagement and participation and raising performance throughout the sector.
- The experience in Canada illustrates the semi-mandatory nature of IBAs and Exploration Agreements in accordance with the unique legal rights of First Nations people. There are beliefs within the mining sector and amongst relevant experts that, while they are not required by legislation, IBAs are 'required' by communities and civil society in order to develop projects. This can create a situation which benefits both local communities and industry, bringing them together as equal parties to the negotiating table.

What we heard

"Regulated CDAs would compel the mining sector to increase their focus; removing the path of least resistance and increasing their role as a responsible corporate citizen with moral and legal obligations"

"Specific successful concepts within regulation include distributing funds and associated benefits more locally, rewarding formal and informal landownership and recognizing community sovereignty over mineral assets"

The main concerns expressed about a regulated model included:

- Specific legal requirements tend to engender a reaction from the mining sector that is less likely to proactively and creatively address the unique development needs and capacity building goals of local communities. The mining sector may thus feel they are protected by the minimum requirements of legislation and are under no obligations to actively pursue more successful CDAs;
- To be relevant, any regulation would need to be extremely flexible and

What we Heard

"When you make laws, companies simply follow them. In the absence of laws, companies are more innovative and creative."

"Specific regulation could potentially kill the flexibility of current voluntary practices, and any new legislation can't be better than voluntary system such as the IBA system in Canada"

"While mining companies should seek to develop projects that are economically, technically, socially and environmentally responsible, they should not be expected to be "quasi-governments or social service agents."

adaptive to local context. Some stakeholders wondered whether it would be possible for legislation to capture the number of variables in the specific context of all projects. The trade-off between relevance and detail could potentially lead to imprecise, burdensome or potentially irrelevant legislation that actually has negative impacts. Stakeholders also expressed concern that regulation developed at an international scale may not be applicable and relevant in different countries and continents where the socio-economic, political, historical and cultural environments were so different;

- Formal regulation could undermine the voluntary efforts of companies and communities already pursuing some form of mutually beneficial partnerships;
- CDA legislation that includes specific parameters for the identification of communities entitled to participate in CDAs can never be accurate enough. For example arbitrary distance around projects is not an appropriate method for identifying impacted communities and identification of project affected people (PAPs) and communities should be required through a robust Environmental and Social Impact Assessment (ESIA) process rather than CDA regulation;
- CDAs rarely last for the duration of a project lifecycle, and those that do require multiple revision and renegotiation. Any regulation must be flexible enough to account for the need to renegotiate based on constantly changing circumstances;
- The definition of land ownership can be extremely complicated for the mining sector that is new to a region but is an important concept in CDAs. Interviews in PNG, a country with a complicated system of formal, informal and culturally specific land tenure system, indicated that mandatory CDAs often need the mining sector to respond to land ownership systems they do not comprehend and in turn can create conflict
- In countries where governance is weak, particularly in remote regions which lack infrastructure as well as local Government capacity, CDAs can inadvertently create great dependence on the mining companies almost replacing Governments;
- CDAs can create 'rights' or 'benefaction' amongst the local communities leading to more conflict if their expectations are not met;
- A CDA is only as good as the strategy and design behind it. It will not, be panacea if the process for developing it and the final content of its community development planning is not done well.

Regulating CDAs; opposing viewpoints

There are mixed views on whether or not CDA regulation is a good thing. Decisions on regulation of CDAs requires careful consideration of multiple perspectives and the identification of the underlying goal of any potential CDA regulation.

Experience has shown that enduring positive outcomes of community development initiatives are directly related to the capacity and willingness of stakeholders to contribute to mutually beneficial long term development goals. The key question is how to create both the capacity and willingness to enable such mutually beneficial interaction. According to many stakeholders, a regulated CDA approach will do little to build such capacity and willingness.

While regulation can potentially help build capacity through compliance with policy guidelines or content requirements, it is unlikely that it will create a healthy willingness among companies or communities to engage in CDAs. Lessons learned indicate that while legislation may increase the number of CDAs in use, it would be much more difficult to ensure the intended outcome. Rather than increasing the instances of good CDAs and good outcomes, specific CDA regulation may “*just lead to a lot of bad community development activities.*”

The consensus suggests that meaningful community development must go beyond mitigation and compensation of impacts and focus on the long term capacity development of local communities and government. The consensus, however, is far from unanimous that regulated CDAs are the most effective means to accomplishing this goal.

7.2.2 *The critical role of partnerships, development forums/ platforms in success of CDAs*

Whether it is in a regulated model like PNG or a voluntary model like Ghana, the role of creating partnerships and development forums is critical to the success of CDAs. In Ghana the creation of the *Ahafo Development Forum* was critical to the success of the efforts. A range of stakeholder engagement activities were designed to promote capacity development in the area as well as to disseminate information and raise awareness of the Ahafo CDA negotiations. A representative council was developed to negotiate the CDAs. Originally involving the 15-8 traditional leaders from the communities within the mining concession, this was eventually expanded to include 54 representatives including regional government, community groups (women, youth etc) and NGOs.

Similarly in PNG the success of the regulated model is due to the formation of Development Forums. The forums provide a mechanism for landowner s and provincial governments to participate equally in decision making. The Development Forum has created a highly democratic process for resource development discussions and decision-making and ensured high standards of transparency in identifying benefits and accountability. They have been successful in securing a greater level of community support for mining development and the MOAs provide at least an opportunity to achieve a greater degree of sustainable development for local communities.

7.2.3 *The risk of unequal development and creation of divisions and power elites*

Even the best model of CDA bears the risks of unintended consequences. Development led conflict is not a new phenomena and very often positive benefits can go to a few sections of the communities and leave the others out, as seen in PNG. The Development Forum process appears to offer an unparalleled level of democratic decision-making in mining development. In this case the government has upheld the primacy of local over national interests in the distribution of mining revenues, and major mining projects have delivered enormous sums into host communities. This has created unequal development in different parts of the country because the priority given to local over broader regional or national interests in the distribution of royalties, equity and infrastructure development, has tended to promote inequitable patterns of development. Inevitably, the scattered mining enclaves tend to widen the gap between rich regions and poor regions.

Furthermore, for local people, success in negotiating their rights depends on establishing legal recognition of their customary titles. The system therefore encourages local people to define clan identity and land boundaries strictly, creating divisions and factional lines. A related problem is that the Incorporated Land Groups (ILGs) to register local landowners and to manage resource rents and incomes do not have the capacity to play an effective role in socio-economic development. Given that, in practice, the ILGs' exclusive function is to collect and distribute mining revenues, it is perhaps not surprising that they are characterized by political in-fighting and devote a disproportionate amount of their time and resources to litigation and legal expenses.

Any CDA model regulations need to be cognizant of such risks and inadvertent consequences.

7.2.4 *Need for Integration of Closure Planning into CDAs*

If used ineffectively, a CDA has the potential to increase the dependence of a community on, for example, funds flowing from mining companies during operations. Even in regulated models like PNG, the stakeholders point out that the Development Forums are not self sufficient units and are dependent on companies, making them unsustainable for the long term. This raises the critical question of what will happen after mine closure.

The CDA should therefore consider effective Closure Planning as part of its core objective. The emphasis on Closure Planning should be reflected in the development, negotiation and implementation of the CDA.

During the development and negotiation of the CDA, legacy issues should be explicitly considered and appropriate measures incorporated into the CDA. Capacity building, progressive and transparent transfer of authority,

responsibilities and benefits, and ongoing monitoring and evaluation are among the most important elements of CDAs to prepare for closure and post-closure.

The importance of ongoing capacity building to ensure development gains established during the life of the CDA are continued in a sustainable manner can not be understated. Such initiatives should be planned for proactively during the design phase of the CDA and monitored throughout the implementation phase to ensure that the outcomes, whether institutional or project based, are sustainable for the long term.

Multiple resources, toolkits and guidance documents provide comprehensive information on best practices concerning mine closure, such as ICMM's *Planning for Integrated Mine Closure Toolkit*.³⁸,

7.2.5 *Integration of Industry Standards and Guidelines*

The development of CDAs should in no way detract from compliance with other initiatives to increase the development performance of mining projects, or local and national government initiatives. On the contrary, project specific CDAs and any potential guidelines or legislation related to CDAs should build on existing legislation, industry standards and guidelines. For example, CDAs and any potential guidelines or regulations should be consistent with:

- IFC Performance Standards and related guidance documents;
- The Equator Principles;
- ICMM Principles;
- Voluntary Principles on Security and Human Rights; and
- Any other applicable national policy or international guidelines.

A simple gap analysis of proposed CDAs compared to existing guidelines would encourage consistency and facilitate the use of well established best practices.

7.3 *FINDINGS IN RELATION TO THE KEY BUILDING BLOCKS*

7.3.1 *Timeframe and Process*

The importance of both the process and timing of the CDA development and negotiation cannot be understated. Indeed, the questions of when the CDA is negotiated, with whom it is negotiated and how it is negotiated are among the most important. Representatives of Government, Communities and the Private Sector concur that the quality of the relationship between stakeholders

(38) The Planning for Integrated Mine Closure Toolkit is available at: <http://www.icmm.com/page/9568/planning-for-integrated-mine-closure-toolkit>

has tremendous value and can be one of the most positive benefits of the CDA. Such a relationship is not prescribed within the CDA; it is a result of a credible process of engagement which encourages communication and builds trust.

Key findings

- Negotiations should start as early in the mine life cycle as possible, ideally during exploration
- Creating trust takes time, but is critical to success
- Participants in the CDA negotiation process should be identified through a combination of impact/risk assessment and self identification; in most cases negotiating parties will also be parties to the agreement
- CDAs themselves, once drafted should be subject to periodic review by the stakeholders as conditions change

The Process is as important as the product: Many interviewees highlighted that a successful CDA will be as good as the methods and techniques employed to develop it and the timeframe and processes used to enact it. For example, representatives of Newmont stated that during the development of the CDAs for Ahafo, the step-by-step engagement process (Outreach programme) was as valuable to the process as the final outcomes. It took almost three years for the CDAs to be developed. Newmont intends to replicate and potentially increase the engagement and negotiation process for other planned projects.

Box 7.1 *Tangible and intangible benefits*

In many cases, the most enduring benefits of CDAs have been related more to the process than to concrete development outcomes. The CDA negotiation process facilitates the establishment of trust between companies and communities. Thus CDAs provide a basis for success, and for improved company-community relationships, but do not guarantee tangible development benefits.

Importance of Early Planning: Stakeholders unanimously agreed that the early planning and preparatory stages of a CDA should begin prior to the development of the mine, as early as possible during exploration. While the upfront commitment to community development initiatives is a budgetary expense that may be unattractive to project developers, early engagement regarding the CDA planning and negotiation process are among the few initiatives noted for their success by all stakeholders.

Early engagement regarding CDA planning and negotiation has been successful in both regulated and voluntary contexts. For example, the Mining Act in PNG specifies early stage CDA negotiations such that the holder of a concession should not begin mining activities until they have reached and registered an agreement with the project landowners on the amount, times and mode of compensation. Voluntary early negotiation, such as that carried out by Newmont at the Ahafo project, clearly illustrate the added value to the project developer and local communities despite the lack of regulated CDAs.

Inclusion of “potential to withdraw” clauses: By beginning the engagement and planning process at this early stage, the CDA can be used to manage stakeholder expectations and potentially pre-empt many negative impacts that may occur later in the life-of-mine. Should the exploration and/or development of a proposed mine prove unfeasible, the relationships built during the CDA negotiation process can be leveraged to manage expectations. Early engagement and negotiation of CDAs requires a mutual understanding that both either party has the potential to withdraw from negotiation prior to the signing of the agreement.

While this mutual understanding may help to manage expectations during the negotiation phase, the ‘potential to withdraw’ is only relevant during the negotiation phase. Once a CDA is signed, both parties are bound to the terms of the agreement, which should clearly describe issues related to the termination, succession and withdrawal of the agreement.

Potential for inclusion in permitting requirements: Interviews with stakeholders in Argentina suggested that buy-in from the mining sector for mandated CDAs would be more substantial if they were associated with other legal permitting regulations required during exploration or construction. However, these stakeholders also mentioned concerns that this might be interpreted as another ‘arbitrary permitting requirement’ or complication that would not be taken seriously if it was interpreted as more red tape or bureaucracy and not commercially useful.

Importance of impact areas in stakeholder identification and mapping: The early stages of the CDA process should include initial Stakeholder Characterization, including identification, mapping and profiling of potential stakeholders and impacted communities who should be engaged and potentially included within a CDA. This stage should include very preliminary impact prediction to help define the Area of Influence of a project for CDA definition. Almost everyone interviewed agreed that the application of arbitrary geographical boundaries for CDA development was counterproductive.

Importance of continuous participation: A well planned CDA needs to include continuous participatory public consultation throughout its life. Engagement during early exploration allows for the development of free prior and informed consent prior to the commencement of CDA negotiations. This helps to promote community buy-in for any agreement developed and ensures that negotiations are inclusive, informed and participatory. The process should include all marginalized groups to ensure that all stakeholders understand the intentions and plans of the company. In the Ahafo project, specific efforts were made by the Community Outreach programme to include the vulnerable/marginalized categories in the CDA forums.

Establishment of governing bodies: Several stakeholders recommended the development of a community council or board of representatives for the

signing and implementation of the CDA. This council should be made up of individuals or registered organizations who can represent all stakeholders including marginalized groups during the negotiation of the CDA.

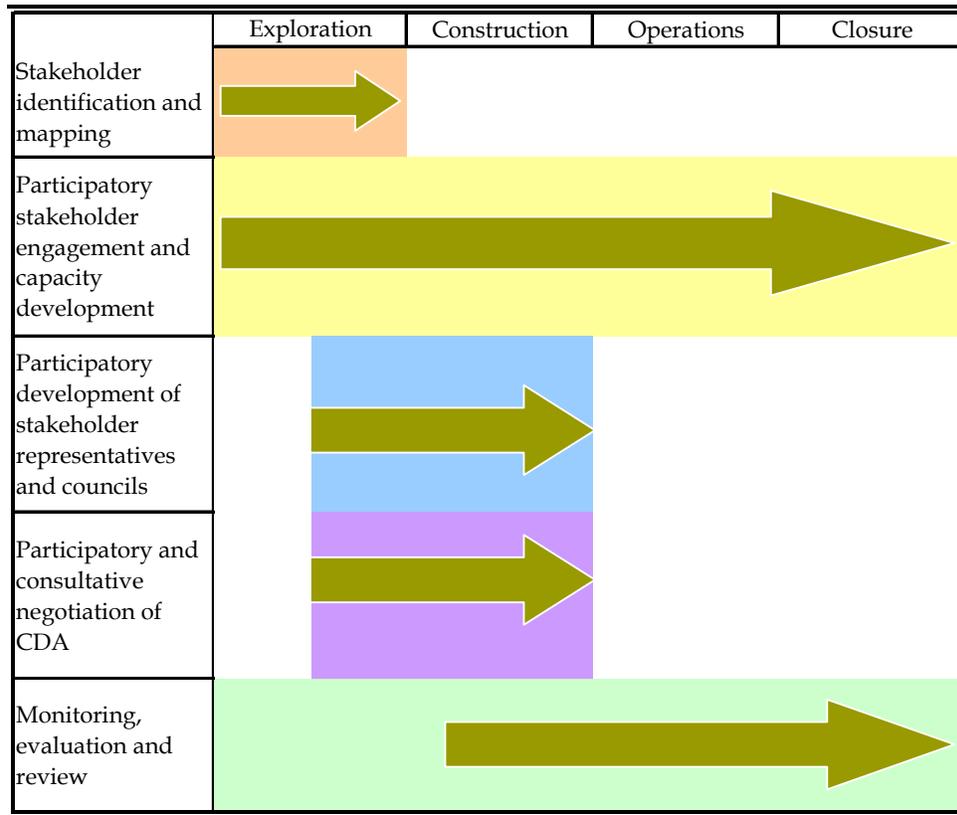
Inclusion of CDA budgets in mine budgets: CDA negotiations should begin early enough to ensure that priorities can be included in budgets for mine design and planning.

Importance of Monitoring and Review: All CDAs should be monitored and reviewed on a regular basis to take the evolving stakeholder situation into account. An appropriate review schedule should be included in the agreement, and include provision for independent monitoring of the development impact of the CDA, in parallel, as necessary. That said, avenues should be made available for groups to raise queries and make requests for amendments within the CDA in between agreed review dates as necessary. Stakeholders in Argentina stipulated that a successful CDA will always be treated as a 'work in progress' and mechanisms for project revision based on lessons learnt should be incorporated into the CDA process. It is possible, for example, that if CDAs had been reviewed regularly in PNG, it might have been possible to change some of the community representatives who had become entrenched and less effective at representing their communities over time, with others who may have facilitated better outcomes.

Building closure planning for sustainability into CDAs: Right from the early engagement stage of the CDA, consultation exercises should consider and feed into some of the basic considerations of a Social Closure Risk Assessment and an Integrated Conceptual Closure Plan. In this way throughout the initial development, review and monitoring phase of the CDA the concerns of social closure are considered and incorporated within the CDA process.

Figure 7.1 illustrates the best practice methodology for CDA processes and timeframe in relation to the life-of-mine, based upon the study results.

Figure 7.1 *Timeframe and Process for a CDA within the life-of-mine*



7.3.2 Stakeholder Participation

Key findings

- A needs assessment that is participatory builds the capacity of stakeholders and “ownership” of its outcomes
- Involving all stakeholders including local government and NGOs in the planning process promotes broad ownership of the CDAs and helps to ensure sustainability and links to other parallel development processes
- Stakeholder involvement should be participatory and inclusive taking care to ensure representation of vulnerable and marginalized groups

The importance of stakeholder participation can not be understated. Stakeholder participation should not just be integrated into every stage of CDA development and negotiation; it should be one of the key objectives of the CDA. Stakeholder participation in the CDA process therefore includes initial capacity evaluations, the decision making process leading up to commencement, negotiation, drafting, ratification, implementation and monitoring of the CDA.

Capacity Assessment: Meaningful stakeholder participation begins with a participatory needs assessment of the capacity of stakeholders. A

needs/capacity assessment conducted at the earliest interaction with the stakeholder increases the potential for capacity development and encourages 'ownership' of the outcomes of engagement. Wherever possible, stakeholders lacking capacity to participate in the development and implementation of the CDA should be provided the means to do so. This may include the provision of basic training on the negotiation process and cross cultural communication, or it may include provision of office space (negotiation centers), maps, reports access to libraries, etc. In such circumstances, capacity building may be both a means and an ends to the entire CDA process.

Commencement: For the development of the CDA to be truly participatory, stakeholders should be involved in the decision making process leading up to the commencement of the CDA process.

Importance of Participatory Planning and Negotiation : Increasingly, the focus of the discourse surrounding community relations and stakeholder engagement is moving away from arbitrary surveys that map the wants and needs of local communities towards a more progressive model of stakeholder participation and involvement in development planning. By focusing on more participatory methods the mining sector can work with stakeholders to develop an enhanced understanding of existing resources, assets and services, building upon the knowledge of stakeholders to identify opportunities for development. This model of stakeholder participation was highlighted during the interview process as particularly valuable in developing stakeholder ownership of CDA activities. Particular models for success in relation to stakeholder participation can be seen in the case studies in PNG and Ghana where local and regional (and in PNG national) government representatives were involved in the CDA negotiation.

Unlike typical stakeholder engagement activities, which may involve feedback on decisions or impacts already faced, engaging stakeholders in the CDA planning process should aim to promote awareness, decision making and ownership from the stakeholders involved. This should encourage stakeholder buy-in to the CDA process and realistic and viable needs-based solutions. A good example of this type of stakeholder involvement was apparent in the Ahafo case study in Ghana where the community foundation is administered by a forum of stakeholder representatives. The requirements for a Development Forum process in PNG also appear to offer an unparalleled level of democratic decision-making in mining development and, despite its drawbacks, may offer a template for securing community support and in encouraging project development through stakeholder engagement.

While there is certainly overlap, CDAs should not be confused with free, prior and informed prior consent/consultation. A signed CDA does not represent broad stakeholder consent. . However, failure to negotiate a CDA may indicate that more effort is needed to engage and inform local stakeholders. From the research it is apparent that in some countries, most notably Canada in relation to First Nations, failure to reach at least some type of formal or informal agreement has the potential to seriously hinder project development.

Stakeholders, including a representative from a NGO in Ghana, stressed the importance of meaningful consultation for trust and understanding, as the building blocks of CDAs. Thus, while CDAs may not represent broad community consent or consultation, they can facilitate the creation of an enabling context upon which trust and transparency can be established.

Participatory Implementation: Based on research and interviews undertaken in PNG, the complex systems of formal, informal and cultural land ownership and usage highlights the necessity to promote stakeholder participation and consultation with a large variety of groups with vested interests. The local model of land tenure protects local people's interest in collective land use, tying land rights to tribal or clan groups. For the mining sector in PNG conducting mining activities without considering rigorous stakeholder consultation would undermine any legitimacy and social license in a complex cultural region since large parts of a population across a large geographical area may hold some sort of land usage or claim to a piece of land under exploration or mine development.

Interviews in Argentina emphasized the importance of stakeholder participation to achieve genuine social and economic development aligned with strong environmental protection. It was clear that in this country, the failure of the mining sector to sufficiently relate and react to stakeholder concerns meant that unrest eventually overflowed in a series of public protests and a referendum against mining activity which ultimately led to a governmental ban on mining within the region.

Stakeholder participation in the CDA process should focus on participatory and representative practices that are fully inclusive and sensitive to potentially marginalized groups, including those marginalized due to gender, ethno-linguistic group, religion, age, disability etc. This engagement should be carried out in a collaborative open atmosphere that encourages transparency and respect. This may mean that physical meeting places should be in 'neutral' territory and in local languages, or may involve holding specific and separate meetings for those that feel unable to become involved when faced with more dominant or hegemonic groups.

A good example of rigorous stakeholder participation includes the Development Forum system in PNG which reflects official acceptance that all key stakeholders should be involved in discussions concerning a potential

mine from the time that the developer submits a proposal for development. The Development Forum provides an opportunity for consultation, rather than modification, of the proposed development but significantly, does not provide a right of veto to the various parties. One of its strengths is that all stakeholders with interests within the mining leases can participate, although neighboring or downstream parties are not included by law. This type of forum is common to both the Ghana and PNG case studies allowing stakeholders the opportunity to contribute to the CDA and planning process in a participatory and inclusive manner.

Box7.3 *Tri-partite Collaboration*

Collaboration between actors in the mining industry, civil society, government and local communities is an important part of the CDA negotiation and implementation process.

During negotiations, there are multiple examples of tripartite agreements, involving the company, the community and representatives of the local, regional or national government. Tripartite negotiations are especially useful to promote accountability. In some cases, however, involving third parties (whether government or non-governmental organizations) can complicate the development of trust between parties and can lengthen the time required to cement relationships. Engaging local government is particularly important to help ensure the integration of CDAs into local development plans, to help foster the long term maintenance of infrastructure projects (e.g. schools and health centres), and to help ensure that long term sustainability of many other types of projects.

Collaboration is especially important during the implementation of CDAs. It is important to include all parties in the planning and implementation of specific initiatives to facilitate coordination and increase the equitable distribution of benefits. In cases where one party lacks the capacity to meaningfully participate, capacity building should be included as a primary goal.

7.3.3 *Capacity of Participating Stakeholders*

Key findings

- Building the capacity of stakeholders is both an ends and a means of the CDA process
- It multiplies the positive impacts of the CDA and promotes long-term sustainability
- Capacity building should be tailored to different stakeholders and should focus on their potential role in CDA implementation
- It should focus on mine staff as well as communities, NGOs and local government

A key building block to a successful CDA process is the process of building the capacity of the stakeholders involved. This will multiply any positive impacts that the CDA may bring and provides long-term benefit to all the stakeholders involved. As the skills of stakeholders increase so do the strengths of the institutions involved, leading to greater independence, self-reliance and long term sustainability.

A key part of capacity development requires an understanding of the needs of all stakeholders and targeting all groups including company personnel, local communities, civil society, NGOs and government, according to their specific needs.

Box7.4 *Lack of capacity*

A key challenge of CDA negotiation and implementation, and a key determinant of the outcome of CDAs is the capacity of all actors involved. Lessons learned suggest that it is difficult, and often counterproductive, for companies to work with communities that lack basic capacity.

For example, companies are often hesitant to partner with communities which lack the capacity to administer funds or promote long term capacity building and development of their own communities. Companies often suggest that by establishing formal agreements with such communities, especially related to benefit sharing and other financial transfers, they are actually contributing to less than ideal outcomes. Multiple cases have shown that tangible benefits, especially financial benefits, are often funnelled to uses other than broad community development and capacity building initiatives.

It is clear that in Ghana for example, many stakeholders felt that the successful negotiation of CDAs owed much to the amount of time and effort, Newmont put into building the capacity of the various stakeholder involved before negotiations commenced. Successful capacity building programs should strategically target specific groups, and should aim to develop skills in areas that will support the functioning of a CDA and the longer term sustainability of community development projects. This may involve building functional capacity such as the ability to negotiate or to engage effectively in participatory or multi-stakeholder processes, building technical capacity associated with specific tasks such as microfinance, education, health, or agriculture or to build behavioral capacity focusing raising awareness to change people's perceptions.

During the research process, many interviewees remarked upon the necessity to include capacity development within a successful CDA process highlighting the needs to raise awareness and capacity of government and other development partners in addition to local community groups. This was universally agreed in all interviews including within the research conducted in PNG where it was assessed that communities need to develop the capacity to identify development needs and to manage their own resources effectively. Interviews stated that the Development Forum process in PNG, whilst being successful as a template for democratic stakeholder consultation, is however ultimately reliant on capacity of participants. The key area where this process has faced challenges relate to the lack of capacity in local and provincial level governance or in community organization and representation.

Further examples of this comes from interviews in PNG where stakeholders suggested that local benefits from mineral wealth have been misappropriated due to a shortage of financial management skills. Typically local communities have faced tensions regarding the immediate division of the spoils, whilst neglecting the question of how to sustain benefits beyond the point of mine closure.

Interviews conducted for the case study in Argentina illustrated the necessity to also consider capacity within the mining sector. The interviewee stated that for large sections of the mining sector, CDAs remain unclear and many still believe that community benefits translate to local donations; seeing CDA as just an additional cost. This issue is particularly true of regions with little history of mining. However where mining is new to a country or region, as was the case in Argentina with Barrick's Veladero, there also an opportunity to introduce the concept of sustainable and responsible mining so that it builds in the collective perception in parallel to that of the mining sector in general. In this way capacity development is as necessary for the mining sector as it is for government, NGOs or communities.

7.3.4

Community Identification

Key findings

- Definition and identification of 'qualified communities should be based on:
 - Self identification and
 - Impact and risk-based assessment
- Periodic reviews of the project footprint and local context should be undertaken to reevaluate the appropriateness of the definition and identification of 'qualified communities'
- A thorough understanding of existing racial, ethnic, religious or political ties and relationship is a key way to minimize risk

The definition and identification of the communities 'qualified' to participate in the negotiation and implementation of the CDA is a key issue which merits considerable analysis. A CDA may represent significant financial, political and socio-economic opportunities, which in some cases are comparatively greater than existing opportunities within the local area. Thus, the inclusion or exclusion of participate in a CDA is directly related to the perceived benefits of participation. An inappropriate definition of the 'qualified communities' can thus be a source of conflict and pose significant risk to those responsible for identification and those party to the CDA.

These risks are even more pronounced where existing racial, ethnic, religious or political tensions or relations may be influenced by the implementation of a CDA. The success of a CDA will be significantly reduced if it is seen to disproportionately benefit one group over another, potentially creating additional risks to the mining project itself.

In order to minimize these risks and increase the potential benefits of a CDA the definition and identification of 'qualified communities' should include, at minimum, elements of the following three procedures:

- Self Identification;
- Impact and risk-based assessment; and
- Ongoing monitoring and adjustment

First, self identification, especially at the earliest stages of negotiation, is an important and well established practice. Self identification enables local communities to determine whether or not they consider themselves to be potentially impacted or otherwise involved in the project based on their own understanding of the complexities related to project impacts, formal and/or traditional land tenure and natural resource use.

This process of self identification also helps minimize the potential to disenfranchise or neglect any marginalized or vulnerable groups that may not have the cultural avenues to demand their inclusion within the CDA through existing administrative or social structures.

Furthermore, self identification is a well established practice, included in the IFC Performance Standards 1 (Social and Environmental Assessment and Management Systems) and 7 (Indigenous Peoples). Such guidance should be applied to the self identification of 'qualified communities' for CDAs wherever possible,

Second, community identification criteria should be considered in relation to impact and risk assessments used to identify all project affected people and include them within the CDA process. Such assessment should be closely coordinated with ESIA processes where these are carried out in a comprehensive and transparent manner.

The identification of communities through impact and risk assessments should include not only local villages within the project's area of influence or physical footprint but also host populations and those stakeholders that are impacted by the project on a regional or even national level. This may include stakeholders involved with supply-chains or transport routes for mining projects as well as regional and national government.

Box7.5

Identifying impacted communities

The process of identifying impacted communities must be participatory. A long history of experience in Nigeria in the oil and gas sector showed that the drawing of arbitrary lines between communities sometimes cutting across clan or ethnic boundaries could create conflict between beneficiary and non-beneficiary communities where there had previously been peace. The BTC project in Georgia decided on a distance of 2 km from its pipeline when it was deciding which villages should benefit from its Community Investment programme. However, this was modified to include communities further away if they were part of the same clan as villages within 2 km of the pipeline. This was a deliberate attempt to ensure that groups of villages remained cohesive and peaceful and to avoid conflict between the haves and the have-nots.

Almost everyone interviewed during the research process agreed that identifying stakeholders according to their status as impacted groups was the most reliable, with numerous criticisms being made of the application of arbitrary geographical boundaries which fail to consider the cultural and geographical nuances of impact transmitters.

In the Newmont Ahafo project there was a clear definition of communities before beginning the CDA process. The agreements were specifically formulated with communities that were in the mining concession area including those that lived, farmed or owned assets in the mining concession. The interviews revealed that while the CDAs were targeted towards directly affected communities there was a clear regional development vision whereby the benefits may gradually be directed towards a more regional/provincial community over the years.

Third, it is important to note that the definition and identification of 'qualified communities' should be revisited and updated periodically throughout the life of the CDA. The terms of the CDA should establish the mechanism by which the definition of 'qualifying community' may be adjusted to include other communities as the project or local context change. Reviews of the project footprint, impact and risk assessments should be undertaken periodically, especially after significant changes in the project or local context. Ongoing engagement with local communities should also be carried out to identify and seek to include stakeholders who feel they should be beneficiaries of the CDA.

7.3.5

Funding and Expenditure Requirements

Key findings

- Some countries legislate for a percentage of earnings to go to community developments, in others it is voluntarily done by companies.
- CDAs help to establish clear criteria for management and allocation of these funds
- Early definition of how benefits are to be distributed strengthens the CDA process
- The CDA can encompass compensation, wages, business contracts, social investment and other benefit streams

Currently there are no agreed guidelines on budgeting for a CDA; however in certain countries, such as Peru, Colombia and PNG, it is stipulated that some part of tax and / or royalties generated by a mining company must be redistributed at a local level. In other companies, including Guinea, state mining contracts and agreements specify the amount and how funds should be transferred to impacted communities. Where these payments are made directly to federal or central government this is often an attempt to ensure the transparency of community development initiatives.

Literature research revealed the pitfalls of making direct payments for community development via federal government or even local government. In many cases (e.g. in Nigeria and Kazakhstan) companies complained of funds being diverted away to areas outside of the operational footprint or of funds being spent on “white elephant” projects rather than those that addressed local needs. There plenty of evidence to support the need for more regulation without increased government control over the actual flow of funds.

In some cases such as including the Ahafo project in Ghana, the payment of funds via a partially independent Community Foundation that receives funds based upon predetermined percentages of earnings and investment to community development initiatives. In NADeF Newmont pays one United Stated Dollar (US\$ 1) for every ounce of gold sold by Newmont in its operation under the Ahafo Mining Lease. Within the CDA Newmont have also stated that one per cent of their net pre-tax income, after consideration of all inter-company transactions derived from the Ahafo Mining Lease, of any gains equal to or in excess of US\$ 1000,000 will be paid to the Foundation.

From the research undertaken it appears that BHP Billiton, one of the largest extractive companies in the world, has a similar policy regarding revenue sharing and community development. Where these voluntary revenue sharing systems do exist the international discourse advocates the use of CDAs to establish clear and transparent mechanisms for managing and regulating the allocation of funds within a rigorous development plan.

Based upon the interviews undertaken and particularly the case study in Veladura in Argentina, successful budgeting of a CDA relies on strategically planning and implementing expenditure around certain development areas to maximize community benefits. In some cases, CDA budgeting and expenditure may successfully be linked with existing local and regional development plans.

A successful example of budgeting expenditure was highlighted by interviewees in PNG where MOAs between landowners, provincial and national governments define respective responsibilities and obligations of stakeholders in relation to obligations and finances. Stakeholders stated that the early definition of how benefits are to be distributed between the various interest groups strengthens the CDA process. In PNG where communities can

receive benefits associated with compensation, occupational fees, royalties, equity wages, business contracts and social investment the application of a CDA can help to manage and regulate this process to ensure the sustainability and equitability of benefits received.

In the Lihir project an IBP was signed by the national government, New Ireland provincial government, Nimamar LLG, the Lihir Mining Area Landowner's Association (LMALA) and LGL. LGL agreed to provide funds worth US\$22 million for the development of social and technical infrastructure on Lihir Island, with an average annual compensation package, including other payments, of approximately \$1 million per year. Under the IBP, 20 percent of the royalties went to landowners in the SML; 30 percent to Lihirian community development (administered by Nimamar Development Authority (NDA), a local government body); and 50 percent to the provincial government. Although the fund flow and distribution model is a good one, the ultimate challenge is the financial capability of the community organizations and even local Government to manage these funds. Stakeholders report that this has been a weak aspect in the PNG context.

Finally, practical issues related to CDA expenditures are related to the implementation structure established by the CDA. One common option highlighted throughout this report, is the establishment of Community-based or Private Foundations to implement CDA initiatives and allocate money to specific projects. However, other potential implementation structures include partnerships with local government agencies, creation of Regional Development Councils or other administrative structures. Selection of an appropriate implementation mechanism is a critical issue related to funding and expenditure, and should be carefully analyzed based on the local context and project objectives.

7.3.6 *Obligation and Responsibility*

Key findings

- There is general acceptance of a "moral obligation" to development from the mining sector
- CDAs are an ideal vehicle to outline the roles and responsibilities of stakeholders involved in discharging this obligation
- CDAs should outline roles, responsibilities and behaviors of the signatories
- It is important for CDAs not to undermine the role of government in providing basic services
- CDAs should distinguish clearly between development activities and those aims at mitigating the companies' impacts

The research and interviews undertaken for this report highlighted a general trend at an international level driven by stakeholders, shareholders and civil society creating a 'moral obligation' for the mining sector to provide development initiatives for their stakeholders. The CDA process, mandatory or voluntary, was highlighted as a potential tool to fulfill this obligation, however consensus surrounding the detail of what should be obligatory, or

the responsibility of the mining sector varied according to stakeholders. Examples given during interviews of this shift in the obligation and responsibility apportioned to the mining sector included the changes to the Canadian royalties system and in Australia to the legal framework surrounding the mining sector.

One of the common benefits of CDAs highlighted during the research process was the ability they provide to pin down the specific obligations and responsibilities of the stakeholders involved. The CDAs developed for the Ahafo project, were careful to include within the agreement the required roles, responsibilities and behaviors of the signatory parties. This was mentioned as a great success of the CDA and a contributory factor to avoiding community unrest on more than one occasion.

A common theme during the interview process was a worry amongst stakeholders that CDAs in developing countries abdicate the responsibility of government to provide developmental services to impacted populations. One of the criticisms made by stakeholder interviewed in Canada of IBAs included that they tended to undermine the role of government in administering and monitoring mining companies, eventually leading to reduction in government social and environmental regulation and programs. The IBA, rather than becoming a tool to monitor and control the mining industry in relation to the interests of communities and government, destabilizes the role of government as a regulator and reduces their obligation to consider the interest of the state and local communities in relation to the mining project. The confidential nature of IBAs can further threaten community interests as government do not have the power to regulate negotiations.

Box7.6 *Impact mitigation versus community development*

The line between mitigation of project induced impacts and the direct benefits of community development initiatives is often inchoate. In some cases companies have emphasized noteworthy community development initiatives to mitigate direct project related environmental and social impacts.

For example, mining projects often claim to have provided benefits to the local community, such as provision of water supplies, infrastructure or social services. Such benefits however are mitigation measures directly related to project induced impacts related to population increase and influx, project use of water and impacts on social services and infrastructure.

While such mitigation measures are intended to benefit local communities they are distinct from voluntary community development initiatives which go beyond mitigation and focus on long term development and capacity building of communities in the project's Area of Influence. CDAs and other community development initiatives should therefore clearly distinguish between mitigation measures and community development initiatives focused on increasing the long term capacity of participating communities.

This fundamental worry from within the mining sector concerning providing proxy governance services is at the epicenter of much of the lack of support from within the mining sector for CDAs or mandatory CDAs. On more than one occasion it was mentioned during the interview process that a CDA should be part of a community development initiative that is entirely separate from the obligation for impact mitigation. The mining sector feel that should the line between these two blur, it will weaken both processes.

7.3.7

Grievance and Dispute Resolution Mechanisms

Key findings

- A grievance mechanism is an essential component of successful CDAs
- CDA grievance mechanisms should be independent and should respect or involve local institutions, traditional leadership and traditional conflict resolution mechanisms
- Grievance mechanisms should be appropriate and accessible for all stakeholders
- Grievance mechanisms should promote trust, dialogue and transparency and capacity building in the CDA process

The implementation of conflict management activities in the form of a grievance and dispute resolution mechanism is a central building block of a successful CDA. CDA grievance mechanisms should provide a framework for all interested stakeholders to raise and negotiate any grievance or dispute related to the CDA.

CDA grievance mechanisms should seek to comply with best practice and industry guidelines contained in, for example, the IFC's *Good Practice Note: Addressing Grievances from Project Affected Communities* (2009) and the World Bank's *Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2008)³⁹.

The following issues are of particular relevance to the development and implementation of grievance mechanisms for CDAs: independence, accessibility, multi-level response mechanism, respect for traditional authorities/mechanisms and capacity building.

The results of this study indicate that grievance mechanisms for CDAs should be independent. A key feature of a grievance and dispute resolution mechanism should be its participatory nature encouraging open and free airing of objections in an environment, paying due consideration to marginalized or vulnerable people.

The Ahafo project in Ghana developed a Complaints Resolution Committee responsible for resolving complaints associated with the CDA process. The creation of this committee, featuring a moderator and four representative members of the Development Forum, demonstrates the importance of independent grievance management from the early stages of the CDA process.

(39) The IFC Good Practice Note: Addressing Grievances from Project Affected Communities is available at the World Bank Guide to Designing and Implementing Grievance Mechanisms for Development Projects is available at: <http://www.commdev.org/content/document/detail/2269/>

This mechanism has been highlighted as a successful way to process complaints related to the CDA and independently and fairly assess and address problems. An independent grievance mechanism and response committee acknowledges the importance of multiple stakeholders in conflict resolution process, which encourages stakeholder buy-in and trust. Because of these strengths representatives of Newmont cited examples of where disruption had been avoided through formal grievance negotiations and agreements associated with the CDA.

Second, lessons learned suggest that a multi-level response mechanism is useful to prioritize grievances based on severity and respond appropriately. All grievances should be addressed in a timely and transparent manner, but may require varying levels of response depending on the severity of the grievance. A multi-level response system helps to identify the severity of the grievance and prescribes an appropriate course of action based on multiple levels of response. This increases efficiency and increases the likelihood that minor grievances will be resolved at a local level.

For example, stakeholders familiar with the Valedero Project in Argentina suggest that Barrick has maintained a well founded reputation for always responding, regardless of whether positively or negatively, to any community demands, inquiries, or suggestions. A 100% response rate is facilitated by a multi-level response mechanism. This process in turn helps to generate trust between stakeholders promoting more constant dialogue, allowing for more strategic interactions and preventing unnecessary actions.

Finally, grievance mechanisms for CDAs should respect, and, wherever possible, incorporate traditional authorities and conflict resolution mechanisms. Independent grievance mechanisms for CDAs may have more capacity to incorporate existing conflict resolutions mechanisms than grievance mechanisms administered by the project developer. In such cases, collaboration with existing mechanisms has the potential to increase their capacity, thereby contributing indirectly to the underlying goals of CDAs.

7.3.8

CDAs and short, medium and long term local development plans

Key findings

- Designing CDAs within the context of local development plans is important for their success - especially in relation to long-term sustainability
- Integrating CDAs into development plans helps to spread mining benefits beyond the immediate project footprint thereby helping to avoid creating dependence
- However there are not always developments in place for this to happen

Many stakeholders interviewed stated that incorporating CDAs within the context of other development plans was a necessity for their success. In PNG many of the most significant mining operations are located in remote areas where government services suffer from reduced resourcing and capacity. These conditions weaken the framework for a CDA and ultimately mean that

without the skills and expertise to provide the supporting services a CDA will ultimately fail to provide sustainable benefits.

Another concern related by stakeholders for the successful application of CDAs included the consideration of regional, national and local development split over a variety of timeframes. In PNG the priority for local over broader regional or national interests in the distribution of royalties, equity and infrastructure development, has tended to promote inequitable patterns of development and diverted resources away from broader development needs and priorities. The mineral policy, although guaranteeing local benefits from mining activities, actually reinforces the enclave nature of mining development, fuelling unsustainable solutions and benefits.

One of the criticisms made during stakeholder interviews of IBAs in Canada was that without a measure for revenue sharing, the economic benefit received can be almost entirely localized. Without the inclusion of government or other stakeholders within negotiations, many agreements can be restricted to have minimal regional or national level benefits, despite the possibly the geographic impacted area spreads beyond the local indigenous communities engaged in negotiating the IBA.

Stakeholders interviewed in Ghana, including representatives from Newmont and the Chamber of Mines stated that a real weakness to the sustainability of the CDA process can be the absence of development plans with which they can integrate. There have been moves in some countries for mining companies to work with the local government to build their capacity so they are in a position to create these development plans.

7.3.9

Accountability, Transparency and Monitoring

Key findings

- CDAs can be a means of promoting transparency and accountability if they are monitored appropriately
- Appropriate metrics are needed to facilitate meaningful monitoring and encourage desired results
- Joint monitoring of CDAs is critical to their success and should involve representatives of all stakeholder groups participating
- Disclosure of audits, financial reports and contracts are important to increase accountability and transparency
- There are mixed perceptions regarding confidentiality in CDAs

Concepts related to accountability, transparency and monitoring were stated as central concerns of the majority of stakeholders involved in this report. In general, accountability and transparency are mutual concerns of both the mining sector and local communities, while monitoring is a primary concern of the Public sector. Thus the appropriate balance between these concepts forms an important building block of successful CDAs.

It should be unnecessary to note that the lack of accountability in existing administrative structures is an underlying stimulus for the development of CDAs. If existing tax structures, royalty systems and development agendas were accountable to local constituents and administered appropriately the need for CDAs would be less apparent. However, in regions where local communities seldom see the benefits of mining royalties and taxes paid at the national level, there is concern that the lack of accountability could hinder the success of CDA agreements as well. Thus, accountability between CDA signatories is a primary concern for both the mining sector and local communities.

In addition to participatory planning and implementation, CDAs can increase transparency by disclosing all relevant information such as project plans, financial reports, contracts and audits. While there are mixed opinions regarding whether or not the actual CDA should be a public document or should remain a confidential document shared between the signatories (*See Box 7.7*), there is much greater agreement that disclosure of information related to the implementation of the CDA encourages trust, promotes transparency and increases the success of the CDA.

Box7.7

Confidentiality

Some CDA initiatives, such as IBAs in Canada, are confidential, and the agreements are self-regulated by the signing parties. In such cases, communities are represented by their own associations or committees and are thought to want to protect the confidentiality of the process, as in some cases they may not want government to know what they receive.

Supporters of confidentiality suggest that when local government is involved, a tendency towards increased dependency on the mining company may develop due to the expectation that the company will provide services otherwise provided by the government, potentially leading to interference with the level of governance, funding, and support to local communities. However, opponents of confidentiality suggest confidential agreements are intended to reduce the companies obligations by eliminating increased negotiations due to comparisons with benefits received by communities involved in other CDAs.

A third issues mentioned by a majority of stakeholders is the importance of appropriate monitoring of CDAs. Effective monitoring has the potential to increase both accountability and transparency but is dependent on the establishment of appropriate metrics.

There is widespread concern that monitoring CDAs based solely on metrics such as percentage of mining earnings distributed, dollars spent or programs initiated will not contribute to long term sustainable development goals at the heart of the CDA. While administrative metrics are important to monitor the actual versus planned implementation status of the CDA initiatives, such metrics do little to evaluate the overall impact of the CDA on the affected communities. Thus, many stakeholders suggest that monitoring of CDAs

include broad development metrics, such as the Human Development Index, to determine the impact of the CDA on the local areas Human Development score.

Even with the appropriate metrics, monitoring is only useful if it contributes to ongoing evaluation and improvements to the CDA initiatives. For example, a partner NGO in the Newmont Ahafo case study highlighted that the documentation, monitoring and evaluation system incorporated within the CDA has provided feedback to the process allowing for improvements between initiatives. At Ahafo, Newmont has developed a Monitoring and Evaluation Unit which reviews CDA and community development initiatives. This unit requests concise monthly reviews as well as more rigorous quarterly reviews of all programs. Representatives of an NGO working with Newmont at Ahafo stated that by incorporating feedback from beneficiaries within the review process, initiatives can be assessed according to the genuine benefits they are providing.

Best practices and lessons learned suggest that all review processes should involve representative community groups in combination with independent moderators allowing stakeholders an independent and participatory opportunity to amend and improve a CDA. If adjustments are needed both parties must negotiate changes and come to a new agreement.

Finally, if governmental agencies are not party to the CDA, they may be in a position to provide appropriate levels of oversight and monitoring. Where appropriate, government authorities may also be well placed to prescribe corrective action if the objectives of CDAs are not being met or one party is inhibiting the success of the CDA.

7.3.10 *CDAs and Legal Requirements*

Key findings

- While companies have been given mining licenses by government, communities often have de facto control over land and can often veto or hinder projects
- This is why CDAs have become common across the world
- Most are developed due to their practical benefits rather than for compliance

The stimulus for creating national guidelines and legislative standards has, until recently, tended to be an organic process based on the specific contexts of the companies and communities, rather than being imposed through external pressure. In most cases, the roots of the CDA process have essentially been a response to the specific needs arising from interactions between the mining sector and communities. While companies may have been granted *de jure* legal rights of mineral resources, communities wield *de facto* control of their land and can, in some cases, hinder or prevent extraction. Well organized communities with sufficient capacity may thus be thought to hold a power of veto over proposed projects.

Companies have thus seen the value of voluntarily entering into CDAs in order to gain support for proposed projects, gain access to complex locations and continue operations while minimizing social risks. Within this context, and despite the lack of formal regulation or enforcement, CDAs have become common in many countries.

An example revealed during the research process includes in Papua New Guinea there is a 'formalized process' by which CDAs are developed and carried out, more for practical purposes than for regulatory compliance. Similarly during interviews stakeholders pointed out, while CDAs (or IBAs) are not legally required in Canada over 150 have been voluntarily developed, many of which have been based on guidelines and toolkits made available by the Canadian Ministry of Mines.

8 RECOMMENDATIONS

The recommendations presented here are provided on the basis of the study and its findings and highlight the next steps necessary to support the continued development and improvement of CDAs in practice.

8.1 NEED FOR CDA GUIDELINES

It is clear that there are significant differences in the effectiveness of CDAs globally in terms of their ability to promote sustainable equitable benefits for local communities from mining projects. There is also continued and contradictory discourse surrounding the regulation of CDAs, and whether or not this is a good idea.

Recommendation: development of a best practice guideline on CDAs that can be adopted into national legislation or used as a voluntary best practice standard within the mining and other similar industries to improve the value of CDAs globally.

This should be pragmatic, include a basic CDA template framework and performance standard on which industry and government can base the agreements or legislation regarding agreements that they develop.

Note: the IFC Performance standards have been adopted as accepted best practice for environmental and social sustainability and, as such, have helped to standardize and benchmark quality and provide recommendations for all stakeholders, whether mandated by financiers, or as a voluntary best practice solution. When we assess CDAs in comparison, the absence of industry guidelines undermines the CDA process and reduces the quality standardization and positive effect they attempt to create.

8.2 USING THE REPORT FINDINGS

Recommendation: use the findings of this report to inform the guidelines or model regulations, particularly the specific findings in relation to the CDA building blocks as set out in Section 7.

8.3 DEFINING THE WAY FORWARD

Recommendation: Develop guidance note concerning CDA development as subject to a multi-stakeholder process to ensure approval and buy-in.