

**ANALYSIS**

**REVERSING THE RESOURCE  
CURSE THROUGH  
LEGISLATIVE COMMUNITY  
DEVELOPMENT**



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## CAN GOVERNMENTS “REVERSE THE RESOURCE CURSE” THROUGH LEGISLATING COMMUNITY DEVELOPMENT?

Brendan Schwartz, Kristi Disney Bruckner, Ahamadou Maiga

Despite decades of research and action to “reverse the resource curse,” progress has generally been mooted. Natural resource extraction continues to underperform its potential development function—especially in commodity-dependent countries in Africa, Latin America and Asia.<sup>1</sup>

At the same time, communities and civil society organisations are mobilising to reshape the landscape of mineral extraction in many different ways. While some advocacy campaigns have demanded a stop to mining, others aim to derive greater benefits for mining-impacted communities and mineral-rich countries.

In response to these demands, government requirements for community development in

the mining sector have risen exponentially over the last 15 years. Much of the existing literature on this topic focuses on the Australian and Canadian contexts where they have been used in the mining sector for decades.<sup>2</sup> However, as our typology of community development requirements indicates below, they are quickly emerging as a legally-binding instrument in countries in the Global South.

Civil society organisations, academics, policy-makers and others need to collaborate to increase scrutiny of the mining sector’s local development mechanisms, in diverse geographies, in order to deliver evidence-based policy advice. This briefing note explores community development in the mining sector by looking at current trends in national legislation.

<sup>1</sup> Sexton, Renard (2018). A new ‘resource curse’ is fueling riots around the world. <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/25/mineral-extraction-makes-countries-richer-right-but-there-is-a-new-resource-curse/>

<sup>2</sup> See Chuhan-Pole, Punam, Andrew L. Dabalen, and Bryan Christopher Land. 2017. Mining in Africa: Are Local Communities Better Off? Africa Development Forum series. Washington, DC: World Bank. (P 56) ‘A main limitation of the literature on the local impact of natural resource booms is that it is still emerging and, consequently, there is a paucity of robust empirical evidence on the effect of resource abundance on employment, local income, distribution of income, and poverty, especially in developing countries. The available evidence is sparse and focuses on a handful of countries—namely, Canada and the United States among developed countries and Brazil and Peru among developing countries. Research into other resource-rich contexts, particularly Sub-Saharan Africa, is needed to increase the external validity of these results and to better inform policy makers and practitioners.’ <https://documents1.worldbank.org/curated/en/517391487795570281/pdf/112971-PUB-PUBLIC.pdf>

## COMMUNITY DEVELOPMENT IN THE MINING SECTOR: AN OVERVIEW OF RECENT TRENDS

Currently mining legislation in over fifty countries requires the implementation some level of community development or benefit sharing. Most of these reforms occurred between 2000-2020.<sup>3</sup> But the laws, regulations and contexts are quite diverse. Some legal frameworks place requirements on the mining company, others on the government, and others through some type of company-community or company-government-community agreement.

Community Development Agreements (CDAs) generally set out the rights and responsibilities of mining companies on a wide range of topics, but typically have a focus on the delivery of socio-economic benefits to mine-affected communities. Examples of benefits include jobs, social investments, or royalties.<sup>4</sup> Governments and companies are using CDAs and other benefit sharing mechanisms to foster the “social license to operate” and manage relationships with local stakeholders.<sup>5</sup>

Some countries, like Liberia, use a model mine development agreement that requires a

CDA; other governments, like Mongolia, have a model CDA that serves as a template for such agreements; and still other governments outline requirements for CDAs, in very general to more specific terms, in national or subnational legislation.

The growth of CDAs as a local development tool is significant since mining-impacted communities have been historically excluded or marginalised from benefit streams generated in the mining sector, while feeling the brunt of social and environmental impacts. Some existing research argues that CDAs create a framework for mining companies to treat communities as a key stakeholder, rather than a third party, by implicitly recognising that local communities should receive direct benefits from mineral extraction.<sup>6</sup> Others contend that CDAs are merely a tool employed by governments and mining companies to exploit rural communities while generating large returns for mining investors.<sup>7</sup>

3 See page 202, Kendra E. Dupuy, Community Development in Mining Laws, 1993 – 2012, in *The Extractive Industries and Society* at 200-215 (2014), [https://www.academia.edu/9418639/Community\\_Development\\_in\\_Mining\\_Laws](https://www.academia.edu/9418639/Community_Development_in_Mining_Laws)

4 <http://ccsi.columbia.edu/files/2016/07/Emerging-Practices-in-Community-Development-Agreements.pdf>

5 International Council on Mining & Metals (ICMM), Community Development Toolkit, 2012, <https://www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf>.

6 Cotula, Lorenzo (2018). Reconsidering Sovereignty, Ownership and Consent in Natural Resource Contracts: From Concepts to Practice. *European Yearbook of International Economic Law*, [https://link.springer.com/content/pdf/10.1007%2F9165\\_2018\\_23.pdf](https://link.springer.com/content/pdf/10.1007%2F9165_2018_23.pdf)

7 Dauvergne, Peter, Jonathan Gamu, The Slow Violence of Corporate Social Responsibility: the Case of Mining in Peru, 2018, in *Third World Quarterly*, [https://www.researchgate.net/profile/Dauvergne\\_Peter/publication/323017036\\_The\\_slow\\_violence\\_of\\_corporate\\_social\\_responsibility\\_the\\_case\\_of\\_mining\\_in\\_Peru/links/5a7c82f00f7e9b477a02d705/The-slow-violence-of-corporate-social-responsibility-the-case-of-mining-in-Peru.pdf](https://www.researchgate.net/profile/Dauvergne_Peter/publication/323017036_The_slow_violence_of_corporate_social_responsibility_the_case_of_mining_in_Peru/links/5a7c82f00f7e9b477a02d705/The-slow-violence-of-corporate-social-responsibility-the-case-of-mining-in-Peru.pdf); Linda Fox-Rogers, Enda Murphy, From Brown Envelopes to Community Benefits: The Co-Options of Planning Gain Agreements under Deepening Neoliberalism, in *Geoforum* v. 67, Dec. 2015, Pp 41-50, <https://doi.org/10.1016/j.geoforum.2015.09.015>; Guillaume Peterson St-Laurent, Philippe Le Billon, Review: Staking Claims and Shaking Hands: Impact and Benefit Agreements as a Technology of Government in the Mining Sector, in *The Extractive Industries and Society* (2015), <https://sci-hub.tw/https://doi.org/10.1016/j.exis.2015.06.001>.

The mere existence of CDAs, or any other local development mechanism, does not guarantee that mining will distribute benefits in an inclusive and robust manner. In fact, evidence suggests that CDAs may be coopted by powerful elites within communities or completely fail to ensure meaningful participation of community representatives,<sup>8</sup> or may contain provisions that limit the rights of communities in contradiction to underlying national or international legal norms.<sup>9</sup> The term “Communities” is often used as shorthand for complex polities that have divergent interests according to social differentiation. Thus, benefits may, in reality, only accrue to a small group of powerful actors instead of being distributed equitably. In some contexts, local development initiatives may not effectively offset the broader social, environmental, cultural and political costs of mining or fit neatly into existing modes of territorial governance. The asymmetry in access to technical and legal expertise between community representatives versus mining companies puts communities at a disadvantage when negotiating and enforcing the terms of such accords, despite the best efforts of civil society organisations to redress this imbalance.

## National Legislative Requirements

Beyond CDAs, national legislation may also impose requirements on the government to support community development; maintain a national or subnational trust or fund; or distribute revenue from royalties to mine-affected local governments communities, as is the case in Cameroon. Recent legislative reforms in Burkina Faso, Guinea, Kenya and Mali have created multiple obligations on both companies and government to deliver local development. For example, Mali’s 2019 mining law obliges companies to implement CDAs with communities and both the government and companies must pay royalties into a local development fund.

Local development in the mining sector is increasingly becoming the subject of academic, activist and policy attention. As a contribution to furthering this field of study, we propose a (non-exhaustive) list and loose typology of legislative arrangements to promote local development in the mining sector. The typology intends to demonstrate that there is no ‘one-size fits all’ approach to local development mechanisms and to unlock creative thinking about how to promote equitable solutions based upon the specificities of each context.

## Community Development Agreement Databases and Libraries

Though many CDAs remain confidential, a growing number are being published in the following databases:

- Columbia Center on Sustainable Investment (CCSI) and Canadian International Resources and Development Institute (CIRDI). Open Community Contracts. <http://opencommunitycontracts.org/>.
- Sustainable Development Strategies Group (SDSG). Community Development Agreements (CDA) Library. <https://www.sdsd.org/archives/cda-library>.
- University of Melbourne. Agreements, Treaties and Negotiated Settlements Project Database. <http://www.atns.net.au/browse.asp>.

<sup>8</sup> The University of British Columbia and Canadian International Resources and Development Institute (CIRDI), Implementing the Ahafo Benefit Agreements: Seeking Meaningful Community Participation at Newmont’s Ahafo Gold Mine in Ghana, 2018, [https://ciridi.ca/wp-content/uploads/2018/07/Ahafo\\_community\\_agreement\\_2018.pdf](https://ciridi.ca/wp-content/uploads/2018/07/Ahafo_community_agreement_2018.pdf)

<sup>9</sup> Neil Craik, Holy Gardner, and Daniel McCarthy, Indigenous – Corporate Private Governance and Legitimacy: Lessons Learned from Impact and Benefit Agreements, in Resources Policy, v. 52, June 2017 at 379-388, <https://www.sciencedirect.com/science/article/abs/pii/S0301420716302902>.

## USE OF NATIONAL LEGISLATION TO PROMOTE COMMUNITY DEVELOPMENT IN THE MINING SECTOR<sup>10</sup>



<sup>10</sup> Data from the Community Development in Mining Collection (<https://www.iied.org/mapping-community-development-requirements-mining-sector>) as well as Columbia Center on Sustainable Investment, Requirements for Community Development in Mining Laws, 2017, [http://ccsi.columbia.edu/files/2014/09/Mining-Community-Development-Requirements-Summary-Table-CCSI-2017\\_February.pdf](http://ccsi.columbia.edu/files/2014/09/Mining-Community-Development-Requirements-Summary-Table-CCSI-2017_February.pdf); Kendra E. Dupuy, Community Development in Mining Laws, 1993 – 2012, in *The Extractive Industries and Society* at 200-215 (2014), [https://www.academia.edu/9418639/Community\\_Development\\_in\\_Mining\\_Laws](https://www.academia.edu/9418639/Community_Development_in_Mining_Laws); and James M. Otto, United Nations University UNU-Wider, How Do We Legislate for Improved Community Development?, 2017, <https://www.wider.unu.edu/sites/default/files/wp2017-102.pdf>.

		Afghanistan	Burkina Faso	Cameroon	Canada	Central African Republic	China	Colombia	Democratic Republic of Congo
Responsibility lies with the state	National law requires the national government to promote community development						1986, amended 1996		
	National law requires the government to establish and maintain national or subnational funds for community development		2015					2012	
	National law requires the government to share revenue with local government or local communities/mine-affected areas			2016				2012	2018, 2003
	Requirement for a fund in subnational legislation								
Responsibility lies with the mining companies	National law requires mining companies to establish a community development agreement	2018							2018
	National law requires the company to contribute to the development of host communities	2018		2016		2009			
	National law requires the company to establish and/or pay into a local development fund		2015	2016		2009			
	National law requires the company to establish a community/government/company agreement or memorandum of understanding (MOU)	2018							
	Host government has a model mine development agreement that requires the company to advance community development								
	Host government has a model CDA that may be used to negotiate an agreement between the company and local government to promote community development								
	Requirements for a CDA or benefit agreement in subnational legislation				2013/ 1984/ 1992/ 1993/ 2003				









## COUNTRY EXPERIENCES WITH THE DELIVERY OF COMMUNITY DEVELOPMENT BENEFITS

The legislative approaches listed above all have strengths and weaknesses to consider, and one may be preferable to another based on unique circumstances of a particular political economy, jurisdiction, community, or project. The actual granular mechanics of benefit planning and management matter greatly, but to date there is a lack of empirical evidence on the effectiveness of local development mechanisms in the mining sector in many parts of the world.

The Publish What You Pay network of civil society organisations has highlighted the question of local development across numerous countries through research and policy advocacy. The results demonstrate an uneven terrain; local development policy reforms and implementation have gained traction in numerous countries, but progress has been limited in others.

In Burkina Faso, Publish What You Pay members launched a campaign demanding one percent of mining revenues to be allocated to local development. The campaign succeeded in 2015 when Burkina Faso's new mining code

created a local development fund, which is supposed to be capitalised by 1% of mining company turnover and 20% of government mining royalties.<sup>11</sup> Implementation of the local development fund has encountered difficulties and criticism—women's rights advocates have decried the lack of representation of women in the local development fund's decision-making bodies as well as a lack of targeted expenditure to the benefit of rural women.<sup>12</sup>

Burkina Faso has also struggled to collect royalties from mining companies to capitalise the local development fund. In 2017, companies paid just 17% of what they theoretically owed under the new mining law. Many companies argued that the obligation to pay royalties violated fiscal stabilisation clauses in their mining contracts that prevent the government from introducing new taxes.

There is an emerging trend of companies using stabilisation provisions, in contracts or legislation, to avoid paying into local development mechanisms that have been

<sup>11</sup> Kabore, Elie (2020). 1% de l'argent de l'or – Campagne de partage des bénéfices par PCQVP Burkina Faso. Publish What you Pay.

<sup>12</sup> Ibid.

newly legislated. Companies in Chile<sup>13</sup>, Guinea<sup>14</sup> and Mali have made similar arguments. In the DRC, the 2018 mining code retroactively applied fiscal changes, including companies' obligations to contribute to local development. Yet stabilisation may still be one of the greatest barriers to robust local development in the mining sector, but further research and evidence gathering is urgently required on this theme.

In countries such as Zimbabwe and Cameroon, civil society efforts to promote local development in the mining sector have had limited impact for complex political economy reasons. In Zimbabwe, economic empowerment legislation provided for community benefits to be channelled through voluntary community trusts (CSOTs). Very few CSOTs were ever created and a wide variance in the quality of CSOT management practices caused some trusts to perform well while others delivered few benefits to communities.<sup>15</sup> The CSOT legislation was recently scrapped as Zimbabwe's elites consolidate control over the mining sector; meaning there no longer exists a legal framework to deliver community benefits.

Cameroon's 2001 and 2016 mining codes provided for royalties to be paid to communities in mining localities. Despite decades of advocacy by Cameroon's PWYP coalition the government still has not published the regulations necessary to deliver local benefits.<sup>16</sup> Cameroon's elite-led governance of natural resources has caused mining institutions responsible for the payment, expenditure and

publication of mining royalties to operate in an opaque manner.<sup>17</sup> Though the country's mining activity is focused in the artisanal and quarry sectors, with no large-scale mines operational, the mining sector has contributed very little to local development.

In contrast, Niger's has been delivering mining (and petroleum) royalties to local governments since passing its legislation in 2006 and 2007. Though mining royalties have delivered concrete benefits and infrastructure improvements, the national government has accumulated significant arrears in delivering royalties to local governments.<sup>18</sup> There also exists a wide variance in the transparency and accounting practices between various governments, which impedes thorough evaluation of the royalties' development contributions.

The PWYP coalitions in many African countries have meaningfully contributed to the embedding of local development requirements in mining legislation. However, the effectiveness of the implementation remains difficult to assess since many initiatives are recent, data and transparency are scarce, and performance varies widely within and between countries. With each passing year, African governments revising their mineral laws are adding local development requirement to legislation. But a lack of in-depth empirical research on legislative design and local development implementation is hampering the provision of evidence-based policy guidance

13 Cambero, Fabian et al. (2021) Chile's decades-old mining deals may hinder bid to lift copper royalties. <https://www.mining.com/web/chiles-decades-old-mining-deals-may-hinder-bid-to-lift-copper-royalties>

14 See Hamidou D. Drame, (2019), "Relationships Between Mining Companies and Local Communities under the 2011 Guinean Mining Code: An Analysis of the Legal Framework Governing LDAs and LEDFs" Oil, Gas & Energy Law Intelligence and Kabore, Elie (2020), Fonds minier de développement local : des milliardaires parmi les communes. L'économiste du Faso.

15 Nyamucherera, Brian & Sibanda, Mukasiri (2020). Tracing Progress Towards Revenue Transparency and Revenue Sharing in the Zimbabwe Extractive Sector 2013-2019. [https://www.pwyp.org/wp-content/uploads/2020/09/Benefit-Sharing-case-study\\_Zimbabwe-FN.pdf](https://www.pwyp.org/wp-content/uploads/2020/09/Benefit-Sharing-case-study_Zimbabwe-FN.pdf)

16 Bissou, Michel et Etoga, Eric (2020). Partage des revenus tirés du secteur minier en Afrique – Impact de la réforme minière – Cas du Cameroun. [https://www.pwyp.org/wp-content/uploads/2020/09/Benefit-Sharing-case-study\\_Cameroun\\_FR.pdf](https://www.pwyp.org/wp-content/uploads/2020/09/Benefit-Sharing-case-study_Cameroun_FR.pdf)

17 Hamann, Steffi, Schwartz, Brendan and Sneyd, Adam (2021). Governing Artisanal Commodity Extraction in Cameroon: A Comparative Analysis of the Gold and Palm Oil Sectors. In *Natural Resource-Based Development in Africa*. University of Toronto Press. Forthcoming.

18 PCQYP Niger (2019). Etat des lieux sur la rétrocession des 15% des redevances minières et pétrolières de l'état vers les communes des régions concernées. [https://eiti.org/files/documents/fr\\_status\\_subnational\\_transfers\\_royalties.pdf](https://eiti.org/files/documents/fr_status_subnational_transfers_royalties.pdf)

## KEY QUESTIONS

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### LOOKING AHEAD

Many empirical questions remain unanswered regarding the optimal mechanisms for delivering community development in the mining sector, particularly in global South contexts. In this section we set out themes to contribute to more informed debates about local development mechanisms:

- **Impacts of expenditures:** Many countries lack basic data about the use of local development initiatives. How is the money being spent and what is the impact? Are local development efforts making robust contributions to the economic, social and cultural wellbeing of all social groups? In an era defined by global environmental and health emergencies, are funds invested in strengthening public services to address these challenges? Are funds being invested to help navigate changes in technology that may further automate the mining sector and reduce direct employment?
- **Climate Change:** There is an urgent need to increase the amount of climate adaptation finance delivered to rural communities across the Global South. Yet, climate change mitigation and adaptation did not appear as priority areas of expenditure in any of the local development regulations reviewed for this briefing note. What are the best strategies for integrating climate change mitigation and adaptation into requirements for community development? and how can community development requirements advance resiliency at the local level?
- **Indigenous Rights & Free Prior and Informed Consent (FPIC), and social differentiation:** Existing research on community development in the mining sector has been timid to highlight the diverse experiences of different groups based on social differentiation. What special considerations should be integrated into community development frameworks for Indigenous Peoples? What about women, youth, ethnic or religious minorities? How can local development mechanisms enhance the sovereignty and full enjoyment of rights for groups facing discrimination?
- **Stabilisation:** Despite the numerous pro-community development statements put forth by large-scale mining companies and mining industry bodies, emerging evidence

suggests companies are citing fiscal stabilisation clauses in their agreements to avoid making contributions to local development efforts. To what extent is stabilisation hampering local development efforts in the mining sector? How can a new generation of stabilisation clauses be designed to allow for the introduction of community benefit provisions where none exist?

The answers to these questions have critical implications for the future of mining-impacted localities.

In conclusion, we suggest the following key actions for civil society advocates, donors, and policymakers:

- Donors and aid agencies should support existing efforts by civil society organisations, including those in the PWYP network, and researchers in the Global South by investing in in-depth empirical research on the effectiveness of existing local development mechanisms;
- Governments and aid agencies providing technical support to mining ministries should be aware of the full spectrum of existing experiences when designing and implementing community development requirements.
- As governments introduce local development requirements, all stakeholders should rally around new mechanisms for community development to increase investment in climate change adaptation and resiliency,
- Finally, further research and creative solutions are necessary to avoid stabilisation of community development provisions in existing mines

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