

**Positioning the Minerals and Mining Act 2022 to protect, respect and provide remedies to grassroots communities:  
A case of Regulations on Community Development Agreements.**

**Key message**

Community Development Agreements are agreements between affected communities and mineral rights holders that give affected communities a voice, encourage meaningful community engagement, help government to achieve sustainable development at both national and local levels, and alleviate poverty while upholding human rights.

**Regulations on Community development Agreements will help ensure that:**

- Both the affected communities and mineral right holders have an understanding on how parties can benefit from the mining activities;
- The views and interests of people in affected communities are considered;
- Affected communities are given an opportunity to be involved in all stages of the negotiations;
- Affected communities are fully informed and have the necessary capacity to have a say (consent) in the activities being introduced in their communities;
- The investment project provides clearly defined contributions that promote sustainable development in affected communities, enhance the general welfare and the quality of life of the inhabitants, and recognize and respect the rights, customs, traditions and religion of affected communities;
- In circumstances where there are disagreements between the parties, there are accessible grievance handling mechanisms.

**Recommendations**

Develop and enact specific stand-alone CDA regulations to provide a detailed step by step guidance on how CDAS should be executed. In the alternative, where this is not possible, devote

significant attention in the general regulations to CDAs and supplement with guidelines.

Develop a Model Community Development Agreement in consultation with relevant stakeholders. We propose that government should enlist certain community members, civil society organizations and mining companies.

Ensure that the model CDA remains a mere guide for community development agreements, which should be adapted to the specific needs of the communities since they are most effective when adapted to the local context and not one size fits all.

Promote independent and expert support to communities in negotiating CDAs including support from civil society organizations, legal aid, valuers, sociologists and other experts or consultants.

Government should extend capacity building programmes for host communities on CDAs and how they work. This may also be relegated to a case by case basis when the CDA is to be negotiated.

Ensure use of inclusive socioeconomic development by using participatory development models in decisions about resettlement, compensation, and community investment. This approach may include community councils that use participatory methodologies to produce inclusive development plans and making special allowances for those populations marginalized from decision-making, such as women, minorities, and people with disabilities.

Develop strict enforcement strategies such as equipping the relevant government officials through capacity building to enable them to effectively monitor and respond to issues arising from CDAS

## 1.0 Introduction

Mining has the potential to generate significant revenues for resource-rich countries, and to provide the energy and resources needed to fuel development and economic growth. However, companies in this sector have long faced accusations of involvement in serious human rights abuses. Over the years, mineral host communities have suffered the adverse socio-economic impacts of mineral activities such as forced displacement, economic and social disruption, environmental degradation, pollution from the use of harmful substances such as mercury, deforestation, violation of human rights, high rates of poverty and inadequate and unfair compensation for property impacted by mining activities. In almost all the cases, mining companies employ private security contractors or are provided with security by government forces, these entities may take actions that violate rights of the community. Mineral host communities are often the first and most negatively impacted by mining activities. These misfortunes are prevalent and have been recorded in most mineral host communities in Uganda, Democratic Republic of Congo, South Sudan, Zambia, South Africa among others.

To this end, Governments must put in place good policies, laws, and enforcement measures to prevent companies from violating rights; mining companies must refrain from negatively impacting rights even when governments are failing to create or enforce necessary laws and that victims of corporate abuses must have access to effective remedy<sup>1</sup>.

Mining being a major source of economic and social development in Uganda, the Government has permitted different investor companies to carry out mining activities without sufficient consideration of these impacts. For these reasons, a proposal to amend the Mining Act, 2003 was commenced and culminated in the enactment of the Mining and Minerals Act, 2022 (the Act). The Act introduces Community Development Agreements (CDAs) in Uganda.

This policy brief makes recommendations on the possible clauses to be implemented in the CDA regulations. It also examines issues relating to CDAs that are not explicitly addressed in the Mining and Mineral Act, 2022. These issues include, for example, crucial definitions, the establishment of a management committee, the enforcement of CDAs and a template model CDA Agreement. It is hoped that the implementing regulations can bring clarity on these aspects.

Uganda is endowed with vast mineral wealth across different regions but many of the mineral rich areas, such as Karamoja, experience the highest poverty rates, with income poverty at 61% and food poverty at 70%. For instance, Karamoja is currently experiencing the worst food scarcity, insecurity, hunger, malnutrition and highest illiteracy levels in the country<sup>2</sup>.

<sup>1</sup> UN Guiding Principles on Business and Human Rights

<sup>2</sup> State of food security in Karamoja worrying, Sunday, June 12, 2022. The daily Monitor. Uganda - Karamoja, IPC Acute Food Insecurity Analysis, March 2021 - January 2022 (Issued July 2021)

Over the past few years the importance of the mining sector in Uganda has grown. Uganda's Mining Sector is currently experiencing exponential growth and the government is increasingly relying on mining as a means of enhancing the country's gross domestic product (GDP). The contribution of mining to Uganda's GDP has grown from 1.1 percent in 2016 to 2.3 percent as of December 2021 .

Government is under duty to; protect citizens and mineral host communities against human rights abuses committed by mining companies, improving the quality of life of local communities, promoting sustainable development and enabling information sharing. One way to arrest challenges faced by local communities affected by a mine's operations is the implementation of Community Development Agreements (CDAs)

The Uganda government introduced necessary legal and regulatory reforms through the Mining and Minerals Policy of 2018 and the enactment of the Mining and Minerals Act, 2022. Most of Part XVI of the Act speaks to community engagement and of particular interest is the requirement for mining companies to execute a Community Development Agreement prior to undertaking any mining operations.

## 2.0 METHODOLOGY

This policy brief is informed by: a desktop review of the Mining and Minerals Act, 2022; a detailed review of CDA frameworks in other jurisdictions, including Kenya, Ghana, Australia and Afghanistan; literature from the World Bank, United Nations Development Programme (UNDP), International Institute for Environment and Development (IIED) and Columbia Center on Sustainable Investment (CCSI).

It is equally informed by field research undertaken by Advocates for Natural Resources and Development (ANARDE), outreaches and

dialogues with communities and district officials, capacity building and needs assessments sessions on community-company engagements in Moroto, Abim, Busia, and Mubende districts.

## 3.0 What are Community Development Agreements (CDAs)?

CDAs are agreements between affected communities and mineral rights holders that give affected communities a voice, encourage meaningful community engagement, help government to achieve sustainable development at both national and local levels, and alleviate poverty while upholding human rights.

They facilitate dealings between the company and the community(ies), facilitate communication and information sharing between the parties, define benefits sharing, modalities of mitigating the negative environmental, social, and economic impacts of the project as well as set up a mechanism for grievance handling and resolution.

## 3.1 The need for Regulations on Community Development Agreements

There is a need to operationalize the provision of the Act on CDAs through regulations. Regulations are essential in incorporating the best practices on CDAs, filling the missing gaps as mentioned above, as well as enabling implementation of the provisions in the Act. This is best addressed through stand-alone regulations of the type attached to this brief. However, if this is not practically feasible, critical elements can be incorporated into the

<sup>3</sup> <https://www.monitor.co.ug/uganda/business/commodities/contribution-of-mining-to-gdp-grows-to-2-3-percent>. Accessed August 2nd 2022

<sup>4</sup> Community Development Agreements (Cdas) Good Practice & Current Practice Emerging Market Investor Alliance March 24,2022 Sam Szoke-Burke, CCSI Brendan Schwartz, IIED Kristi Disney Bruckner, Irma]

general regulations of the Act. In case of the latter, we suggest that government considers supplementing the general regulations by issuing guidelines to further break down the rather long and dynamic process of entering a CDA.

The provisions of the Act are not explicit on best practices such as: defining or determining the communities requiring a CDA, objectives of the CDA, obligations of mineral right holders, social and economic contributions to be made by a mineral right holder, among many others. These gaps call for strong and clear CDA regulations. This policy brief proposes relevant provisions on this matter in the subsequent part.

This will help ensure that:

both the affected communities and mineral right holders have an understanding on how both parties can benefit from the mining activities;

The views and interests of people in affected communities are considered;

Affected communities are involved in all

stages of the negotiations;

Affected communities are fully informed and have the necessary capacity to have a say (consent) in the activities being introduced in their communities;

The investment project provides clearly defined contributions that promote sustainable development in affected communities, enhance the general welfare and the quality of life of the inhabitants, and recognize and respect the rights, customs, traditions and religion of affected communities;

There is an agreement on compensation by the mineral right holders or a mechanism for determining compensation for any infractions done in the course of its mining activities and for determining surface rights, payment of royalties and trusts;

In circumstances where there are disagreements between the parties, there are accessible grievance handling mechanisms.

## **3.2 The law relating to Community Development Agreements in Uganda**

### **3.2.1 Legal framework**

Uganda's new Mining and Minerals Act, 2022 lays the foundation for CDAs as a means for mineral right holders to engage with communities. Part XVI of the Act provides a general framework for CDAs, but there is need to enact detailed regulations to guide practical application.

In particular, Section 228 of the Mining and Minerals Act, 2022 obligates mineral right holders to assist in the development of mining communities affected by their activities in order to promote sustainable development, enhance general welfare and quality of life of the affected communities, to recognize and respect the rights, customs, traditions and religion of local communities and these must include benefit sharing.

The law provides for open, inclusive and non-coercive consultation and also the need to consider interests of indigenous or tribal communities and utilization of international instruments in the process. Section 229 of the Act further provides that before commencement of operations, the holder of a mineral right (except a prospecting, exploration and or artisanal mining license) must negotiate and conclude a CDA with



representatives from communities likely to be affected by the holder's mining operations. This is mandatory before the mineral right holder can attain a License. Community under the Mining and Minerals Act, 2022 is defined to include both the primary "host" communities and the "affected" communities. Host communities are discussed in detail below.

To guide the process of formulating a CDA, Section 229(5) enjoins the Minister, in consultation with the relevant stakeholders to develop a model community development agreement to guide negotiations between the parties. A model CDA is, and should remain, a guide to the affected communities and the license holders in determining the terms of the agreement between them as each community is different and professes its own interests.

### 3.2.1 Regulatory

The Ministry of Energy and Mineral Development is the regulatory body for the CDAs. In particular, law provides for the Minister responsible for Minerals as the authority to which all documentation is presented with the power to develop a Model CDA.

Section 27(2) equally enlists the local government to be facilitators, for negotiation and implementation of community development agreements. The regulators execute this work alongside 'stakeholders' who shall be determined as according to the regulations.

### 3.3 Crucial Definitions

The regulations on CDAs should provide for clarity of principles through definitions of ambiguous phrases. Central to the implementation of CDAs is defining "community." The Act uses both the term primary host community and affected community (or communities affected by the mineral operations). The Act provides for executing CDAs under Section 228(2) with a "primary host community." In Section 229(2) the agreement is with "a community likely to be affected by the holder's mining operations" while Section 229(3) looks to "all other affected parties." This use of varying descriptions of "the community" creates ambiguity that requires rectification. The regulations must be clear on what communities can be considered by the mineral right holder's activities, in order to execute an agreement which can accommodate all the communities impacted by mining operations and avoid excluding any eligible parties. The Act under Section 8 defines a primary host community to mean a single community of persons mutually agreed by the holder of a large scale, medium scale, or small-scale mining license and the local government where the mining area is located, but if there is no community of persons residing within thirty kilometers of any boundary defining the mining area, the primary host community shall be the local government; however, defining community solely on the basis of proximity to the license holder's activities can create conflicting claims when more than one community is located nearby, as well as overlook the possibility that the community most seriously affected by operations is not always the one closest in proximity. The Act appears to acknowledge that more than one community may be affected, with the use in Section 229 of the more expansive term **affected communities**, which covers every community that can justify that they will be affected by the mining activities of the License holder.

The Regulations should establish a criterion of how to identify communities for the purposes of CDAs based on factors alongside proximity including, findings from the Environmental Social Impact Assessments, proof of effects of the project by communities, long term effects among others.

For example, the Afghanistan's Mineral Law defines the phrase '**Affected communities**' as "*those persons who are impacted, or can be reasonably expected to be impacted, by Mineral Activities*". This not only covers those impacted but even those likely to be impacted by the mining activities.<sup>5</sup> To avoid ambiguity, it would be best for the CDA to be negotiated with all communities likely to be affected by the license holder's activities, this would necessarily include the proximity-based Primary Host Community.

For instance, in relation to community land rights, the Act specifically requires mining operators to obtain land rights before they are licensed. However, the emphasis of a CDA should not only be the persons with right to the Land or proximity but also identify relevant community groups and stakeholders by undertaking impact studies, typically with respect to environmental, socio-economic, health, cultural, religious and human rights impacts.

### **3.4 Community Development Agreements as a means of achieving Free Prior & Informed Consent (FPIC)**

CDAs and FPIC are two differing regimes but share overlapping practical realities. FPIC focuses on consent based on engagement that is free from external manipulation, coercion or intimidation; sufficient and early notification prior to commencement of any activities. It's a specific right that indigenous peoples have the liberty to give or withhold consent to a project that may affect them or their territories<sup>6</sup>. This principle applies in circumstances where the affected communities have indigenous people settled on the Land. It calls for full disclosure of information on a proposed project or activity in an accessible and understandable manner as well as acknowledgment that the people whose consent is being sought can approve or

reject a project and that the entities seeking consent will abide by the community's decision.<sup>7</sup>

According to Section 228(7) of the Mining and Minerals Act, 2022 where indigenous or tribal populations are part of the consultation under this section, the parties shall refer to international guidelines on the appropriate way to proceed and shall strive for full prior disclosure, informed participation and due consideration of issues put forward in advance of any decisions to be taken as part of the consultation. The regulations must prescribe a procedure that envisages the principle of FPIC while negotiating a CDA agreement. Disagreements over proper community consultations and Free, Prior, and Informed Consent (FPIC) are a source of conflict, they continue to be particularly impacted by extractives activities, as these resources are often located on lands tied to their cultural identities and livelihoods. Mineral rights holders should strive to meet the highest standards where possible, including special measures to their indigenous knowledge, cultures and traditional practices.

### **3.5 CDAs as a tool for enforcement of guiding Principles of business and Human rights and fundamental Human Rights**

**The UN Guiding principles on Business and Human Rights** encourage countries to come up with regulations that are fully able to protect the human rights of its citizens and to ensure access to remedy. CDAs are a means to assist the Government to meet its responsibility to protect human rights and for companies their responsibility

<sup>5</sup> Article 3(28) of the Minerals Law, 2014

<sup>6</sup> United Nations Declaration on Rights of Indigenous peoples (UNDRIP)

<sup>7</sup> [https://responsiblemining.net/wp-content/uploads/2022/04/FPIC\\_IRMA-Community-Toolkit\\_21Sept27.pdf](https://responsiblemining.net/wp-content/uploads/2022/04/FPIC_IRMA-Community-Toolkit_21Sept27.pdf)

to respect human rights of affected communities.

These include but are not limited to; the right to freedom from deprivation of property through adequate and fair compensation, women rights in the mines, children's rights including freedom from child labor, workers' rights, the rights of community to culture and preservation of their sacred sites, right to clean and healthy environment, right to access information, the right to participation and the right to human dignity. The regulations should identify affected groups and the interest of such a community, benefits to the community, respect for rights, compensation of their surface rights. **The regulations must also provide for mechanisms** of dispute resolution and remedies where disagreements arise.

### **3.6 Procedural aspects of Community Development Agreements**

There is a need to establish the steps that should be taken when it comes to executing CDAs. Section 229 of the Act, shows that the CDA must be negotiated as a prerequisite for mineral operations and not imposed upon the community. Such procedure should be meticulous enough to allow communities to voice their concerns and desires but in the same spirit, expeditious enough to allow mineral rights holders to commence production and invest in the mining activities.

The regulations should guide the initial meetings, the process of choosing representatives, presentation of the project and its impacts, repeat negotiations (as opposed to one community meeting), signing of a CDA, and review or amendment of the same. They should also preserve enough scope for

communities themselves to shape and define these processes in each case, to maximize culturally appropriate and inclusive processes and avoid a "one-size-fits-all" approach.

The regulations should set out the different stages of negotiating a CDA; such as the research and consultation stage, that entails identification of affected parties and gathering of information, followed by the second stage which is the pre-negotiation process, this deals with identifying representatives and Ironing out their interests, the third stage is the negotiation process, agreeing on the terms and endorsing them and finally the implementation and monitoring stage, that is enforcing the agreement.

The above stages of negotiating a CDA envisage the principle of Free, Prior and Informed consent that is through carrying out consultations with the affected communities, availing them information and agreeing on the activities that are to be done in their communities. A model agreement must be part and parcel of the regulations to help in guiding the parties as they formulate the agreement.

### **3.7 Can a model community development agreement work?**

Agreements vary from community to community as each has its own needs. The argument for a model CDA to be envisaged in regulations seeks to entrench certain crucial or relevant considerations that cannot be left out for the benefit of the different communities. However, government should be cautious not to be overly prescriptive and overshadow the unique circumstances of every community. It should be clear that a model CDA is just a model or a guide that can be modified or ignored depending on the specific circumstances of the communities involved.

Some important clauses to be envisaged in

the model agreement include clauses on social and economic contributions for sustainability of the community; assistance in creating self-sustaining income-generating activities; consultation regarding mine closure; agriculture; environmental and socio-economic management; local governance; monitoring of CDA, grievance mechanisms or amendment, validity or duration of CDA etc. Others include local content provisions such as issues of educational scholarship; apprenticeship and technical training; employment opportunities for the community; infrastructural development and maintenance; support to small-scale and micro enterprises; special programs that benefit women, youth and persons with disabilities; support for cultural heritage and sports as well as dispute resolution.

### 3.8 People representation

CDAs are to be executed by representatives of a community. Through our work in Karamoja and Busia, we have witnessed the disdain the communities have for representatives who fail to represent their best interests. Representatives should be chosen by the community after agreeing on the terms that the community desires, and should strive to fully represent the people in the community. **Kenya's CDA Regulations**, for example, stipulates various persons who can be on the management committee such as members of parliament, district elected representative, representatives of youths, elderly women and civil society.

The regulations should provide for community representatives on the management committee to give ownership to the process. At least the management committee may consist of 10 members including 6 representatives of the community, 2 representatives of the

mineral right holder, 1 representative from the district leadership and 1 technical advisor and where need be, a representative district political leadership.

### 3.9 Enforcement of Community Development Agreements

Whereas the law is clear that negotiating a CDA is mandatory, a CDA is only as good as its enforcement. The CDA should be tied to the investment contract to ensure that in the case of failure to adhere to certain conditions that are considered to be material as provided by the Act and in the CDA, once notice has been duly given to the mineral right holder by the Minister, if the holder fails to redress or remedy the breach, the Minister may then terminate the investment contract. The state would then have additional leverage when seeking to persuade the investor to comply with the CDA.

The regulations and the Community development agreement should impose an obligation on the company to pay compensation for loss or damage caused by non-performance of a contractual obligation<sup>8</sup>.

### 4.0 RECOMMENDATIONS AND CONCLUSIONS.

In context of the above analysis, we make the following recommendations. Government should;

1. Develop and enact specific stand-alone CDA regulations to provide a detailed step by step guidance on how CDAs should be executed. In the alternative, where this is not possible, devote significant attention in the general regulations to CDAs and supplement with guidelines.

<sup>8</sup> This type of enforcement clause can be seen in the Greenlandic agreements reviewed: see <http://ccsi.columbia.edu/work/projects/greenland-2/>



2. Develop a Model Community Development Agreement in consultation with relevant stakeholders. We propose that government should enlist certain community members, civil society organizations and mining companies.
3. Ensure that the model CDA remains a mere guide for community development agreements, which should be adapted to the specific needs of the communities since they are most effective when adapted to the local context and not one size fits all.
4. Promote independent and expert support to communities in negotiating CDAs including support from civil society organizations, legal, valuers, sociologists and other experts or consultants.
5. Government should extend capacity building programs for host communities on CDAs and how they work. This may also

be relegated to a case-by-case basis when the CDA is to be negotiated.

6. Ensure to use inclusive socioeconomic development by using participatory development models in decisions about resettlement, compensation, and community investment. This approach may include community councils that use participatory methodologies to produce inclusive development plans and making special allowances for those populations marginalized from decision-making, such as women, minorities, and people with disabilities.
7. Develop strict enforcement strategies such as equipping the relevant government officials through capacity building to enable them to effectively monitor and respond to issues arising from CDAS.

## 5.0 CONCLUSION

The provisions relating to Community Development Agreement are activities that companies have always looked at as voluntary, good will, or part of corporate social responsibility with the frequent result that they merit little attention and are not considered per se enforceable. In truth, these are activities from which communities derive much of their protection from negative impacts and realize most of the positive benefits from mining operations. As such, CDAs are a mechanism that can transform the above activities into enforceable deliverables for companies to lift the status and wellbeing of mineral host communities.

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