



**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



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Corporate Responsibility & Community Development Agreements

- Generally, Kenya does not have a formal CSR framework to guide business operations.
- Definition of CSR – ethical behaviour
 - economic development
 - improvement of quality of life for workforce and their families as well as local community and society at large.



Statutory regulation of ethical standards and corporate behaviour - Nigeria

- Nigeria has a mandatory CSR framework under the Nigerian Extractive Industry Transparency Initiative Act, 2007 (NEITI Act) which stems from the global Extractive Industries Transparency Initiative (EITI)
- Objective of global EITI is to promote transparency and engagement with stakeholders in oil and gas producing countries in order to reduce the high incidence of economic under performance, conflict and poor governance in such countries.
- Section 16 of the NEITI Act in its compulsory nature creates sanctions against breach of the provisions of the Act by companies, their officials and government officials who give false information or account to the federal government of Nigeria. Fine of USD 200,000 for company. USD 30,000 for directors or 2 years imprisonment.



Legal Framework for CDAs

Constitution 2010 – the Community shall have a right to participate in planning for corporate social responsibility projects that are to be implemented within the contract area by the contractor in consultation with the Government and the County Government

Powers conferred by **Section 223** and pursuant to **Section 109(i) Mining Act of 2016** – ‘The holder of a mining licence shall sign a community development agreement with the community where mining operations are to be carried out in such a manner as shall be prescribed in Regulations.’

Community Development Agreement Regulations, 2016 which provides a framework for regulating the way mining companies engage with communities likely to be impacted by their operations.



Purpose of CDAs

- Improvement of governance of natural resources
- Economic empowerment
- Promotion of peace
- Environmental, social and cultural sustainability
- Provide legal basis on which mining operations and mining-related activities are conducted in a manner that the benefits of the mining operations or activities are shared between the holder and the affected community



Outcome

- Allows for participatory decision making established to institute representation of communities in decisions on extractive industries; and
- Safeguarding of the rights and militate against growing tension between communities and investors.
- Enables public institutions, the private sector and civil society to have systems to ensure transparent, accountable and inclusive management of revenue from extractive industries.
- Ensuring that a legal and policy framework and institutional capacity is in place to effectively support sustainable management of the extractive sector.

UNDP Kenya - Global Programme for Extractive Industries Report



Requirements & Objectives under Regulations

- All holders of mining licences are required to enter into CDAs with one or more communities located around their exploration and mining operations areas.
- Holders of mining lease or special mining leases under the repealed Mining Act who had entered into a CDA or has started some community development initiative, scheme or social development programme prior to the coming in force of these regulations will be required to ensure compliance with the regulations within 18 months after coming into force of these regulations – 4 February, 2019. *This requirement will not only be costly but disruptive to the already existing agreements and arrangements with communities.*
- To ensure accountability and transparency in mining related community development
- To define when CDAs are required and to provide a framework for such agreements.



Identification of a Community

- A “community” is defined under the Mining Act as (a) a group of people living around an exploration and mining operations area; or (b) a group of people who may be displaced from land intended for exploration and mining operations.
- A community is identified by the licence holder following the Environmental Social Impact Assessment and with the approval of NEMA.
- More than one community can be affected and the holder may: (a) enter into 1 agreement with a single community; (b) enter into 1 agreement with several communities; and (c) multiple licence holders may enter into 1 agreement with a single community.
- A community may also on its own initiative notify a holder that it should be a party to a CDA



CDA Committee Representatives

- Holder shall appoint its representatives and shall notify, in writing, the affected mine community with a copy to the Cabinet Secretary.
- Affected community shall elect a CDA committee comprising the following:
 - (a) The Governor or a representative appointed by the Governor;
 - (b) The National and County Government representatives in charge of administration;
 - (c) One or all representatives from the County Assembly from the electoral area within which the affected mine community is located;
 - (d) One elected representative of women;**
 - (e) Two recognized community leaders or elders;
 - (f) Two elected representatives of the youth **at least one of whom is a woman;**
 - (g) One representative elected by a NGO working in the County;
 - (h) Two elected representatives of marginalised groups, persons with disabilities, ethnic and other minorities;
 - (i) The Members of Parliament of the constituency of the affected mining community; and
 - (j) 3 representatives of the holder.



Role of Committee

- Monitor and evaluate compliance with terms of agreement;
- Provide platform for debate by community on revenue use and ensuring conformity to the development priorities of the community;
- Facilitate continuous engagement and serve as the link between the community and the holder;
- Settle all disputes, grievances, issues, matters or complaints that may arise whether related to the CDA or not as raised by the parties.

Drafting of a CDA

- Shall be prepared by license holder together with community representatives;
- Shall be in both English and Kiswahili and in the local language where possible;
- Shall include helpful charts and schedules to clearly reflect time-based actions and other information;
- The parties shall have consultations which shall be the process of dialogue involving the community and other interested parties at the village level;
- License holder can also assist a community where it lacks the capacity to negotiate by providing funds for the community to hire experts or consultants.

Negotiation & Monitoring of a CDA

Regulation 9 provides that both the negotiation and implementation or monitoring of a CDA shall be conducted by the authorised representatives of the parties.

Regulation 16 provides for parties to show commitment to transparency by filing quarterly written publication of status of CDA implementation by the parties to be available on Ministry of Mining official website.

Contents of a CDA

Issues to be addressed may include but not limited to the following matters:

- (a) the role of County Government;
- (b) educational scholarship, apprenticeship, technical training and employment opportunities for the community;
- (c) employment for members from the communities;
- (d) financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power;
- (e) assistance with the creation, development and support to small-scale and micro-enterprises;
- (f) special programmes that benefit women;
- (g) special programmes that benefit youth;

Contd.

(h) agricultural product marketing;

(i) protection of natural resources;

(j) support for cultural heritage and sports;

(k) treatment of cultural and sacred sites;

(l) treatment of ecological systems, including restoration and enhancement, for traditional activities such as hunting and gathering;

(m) how cultural values will be respected;

(n) funding and control mechanisms to ensure funds are utilised as intended and are transparent and auditable;

(o) other topic areas as may be agreed between parties;

(p) special programmes that will benefit persons with disabilities.

Key issues & Challenges

- How effective is the composition of the committee against political interference?
- Do the regulations meet the Constitutional threshold of the gender rule requirement on representation?
- Does the stipulated negotiation and monitoring proviso provide for a full proof method of ensuring protection for the affected community? Can it be subject of abuse?
- Should Kenya join the EITI and adopt a similar framework as Nigeria and other jurisdictions for CSR?

Thank you

