

## **MEMORANDUM ON THE DRAFT COMMUNITY DEVELOPMENT AGREEMENT**

### **BACKGROUND**

XYZ Ltd (XYZL) took over from Sirimion Ltd. had been operational for more than a century in the Lake Nakuru area. The company's engagement with the local community through its Corporate Social Responsibility (CSR) has been to meet the very basic obligations which basically amounts to tokenism as this has not been able to meet the needs of the community as it has no voice in the development projects that are initiated on its behalf.

However, the coming into force of the Mining Act No. 16 of 2016 with the attendant regulations under the Mining (Community Development Agreement) Regulations of 2017 has secured community interests by ensuring that communities directly affected by the company's operations are empowered to ensure that the company's social performance obligations previously undertaken under the CSR programme have a more robust framework that gives the community a chance to monitor the proposed development programmes to ensure that they are consistent with the continuing economic, social and cultural viability of the community.

The four group ranches, Ole Shompole, Oldoinyo and Olkeri being represented by the XYZ Community Forum, have come together to develop a draft text that shall be used in the negotiation process with the company. This is a proactive measure that will ensure key issues of concern are captured and give the community leverage in the negotiation process.

### **RATIONALE**

The local community surrounding the XYZL have for a long time been willing to create a conducive working environment for the company to undertake its operations. This is despite XYZL not being a good corporate neighbor given the nature of complaints emanating from the community regarding its operations. While the company indeed has a license to operate the mine, it lacks the social license to operate within the locality.

The affected community has repeatedly implored the company to contribute to the economic, social and cultural wellbeing more substantively and in a better structured framework. Further, the lack of transparency and accountability in mining related community development has seen the company declare huge sums of money being contributed to its CSR programme while the evidence of the ground suggests that such monies are not meeting the intended purpose.

In a move to be able to more equitably share the benefits from mining, the local community, through its representatives, has invoked the Mining (CDA) Regulations which basically require the company to have complied with the new framework within a period of 18 months from March 2017. The key issues that the community has identified to go into the CDA include:

- (a) The representatives of the community have agreed on a format of the CDA committee based on the Mining (CDA) Regulations with membership including various members of the County Government of Kajiado, a representative of the national government, select members of the community as well as representatives of XYZL. The main aim of this committee is to monitor and ensure the compliance of the terms of the CDA by XYZL. Further, the CDA Committee will serve as a link between the communities at the grassroots level and the company. Because of the requirement that the CDA committee must at all times act in the interests of the community, the it shall engage closely with the XYZ Community Forum which shall be the overall body representing the community.
- (b) To ensure the peaceful co-existence between the company and the communities, the CDA Committee shall have a sub-committee on dispute resolution. This committee, the Complaint Management and Dispute Resolution Committee, shall be tasked with ensuring that all the disputes arising from implementation of the Agreement are resolved amicably and swiftly in a just and fair manner. This committee shall comprise of an independent moderator and two representatives from the communities and the company.
- (c) To uplift the economic welfare of the communities, the community representatives included a clause in the draft text to the effect that the company should employ the local community as both skilled and unskilled laborers, where applicable, as opposed to having many workers from other places. Emphasis on training and education of the available labor was also made. The company, together with other stakeholders such as the County Government, have been tasked with putting in place programs and initiatives that will ensure that local members of the community optimally utilize their resources in the mining process.
- (d) In keeping in line with the utilization of local resources, the community representatives during the drafting process indicated that procurement processes, such as contracting and tendering, be done in transparent manner. Furthermore, they indicated that they be considered on a priority basis in matters of supply of goods and services and employment.

- (e) Finally, the community representatives addressed the issue of the Madini Foundation which is in existence. They proposed the establishment of a Trust to be known as the Madini Community Development Trust (MCDT). This position arises from the fact that the Madini Foundation leadership has no link to the communities affected as none of its sitting members originate from the communities. This will be the body that will be tasked with the management of funds as envisaged under the Mining (CDA) Regulations.
- (f) The proposed text of the CDA is at its core, an agreement that protects the community's interests in the operations of XYZL. The County Government of Kajiado will supervise and drive the implementation of the CDA.

### **CONCLUSION**

The recommendations and suggestions put forward in this round of consultations are important but not conclusive. A meeting with all the stakeholders, including the community at large, the company and the County Government of Kajiado will not only be beneficial in further strengthening these proposals but will foster greater understanding between the parties. There is an urgent need to have an effective agreement given that the time that was proposed under the Mining (CDA) Regulations for the conclusion of an agreement has already lapsed.