

African Mining Legislation Atlas (AMLA)

TOOLKIT ON LOCAL DEVELOPMENT & COMMUNITY ENGAGEMENT IN MINING PROJECTS



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Foreword

Nearly a decade ago, the World Bank together with the African Legal Support Facility and the Africa Union launched the African Mining Legislation Atlas (AMLA). The core mission of the project was to curate critical legislative knowledge that will contribute to strengthening the ability of African countries to maximize the benefits of mineral development. This mission continues to be vital. Africa cannot attract quality investments for the mining sector without the right legal framework and adequate, stable governance, with a shared value ethos that is transparent and climate responsive.

AMLA has developed useful knowledge instruments designed to bridge information gaps and build the capacity of African governments and mining professionals on critical legislative and policy issues. This includes the flagship [AMLA Platform](#) and the [AMLA Guiding Template](#). The AMLA Platform is a free online one-stop interactive database with mining legislation of all the African countries. The Guiding Template is a mining legislation drafting and reference tool, which provides a good practical foundation on mining legislation supported by sample drafting language.

The Guiding Template covers several topics including the various elements of local development and community engagement. It provides examples of how African countries can incorporate local development and community engagement obligations into mining legislation, to facilitate inclusive, equitable and sustainable mineral development. Mining can enable job creation, skills acquisition, enterprise and infrastructure development. However, its demerits include displacement, loss of livelihoods, loss of productive land, environmental damage, destruction of cultural sites, loss cultural identity and social structures. Appropriate local development and community engagement provisions in mining legislation coupled with responsive policies and regulatory structures can unleash the benefits while mitigating the negative impacts of mining.

Building on the Guiding Template, this toolkit addresses the unique opportunities and peculiar challenges presented by effective local development and community engagement in Africa. It guides countries on how to develop and strengthen the implementation of already existing community development obligations enshrined in mining policy and laws.

Consistent with the partnership approach that runs through the AMLA project, the Toolkit has been developed in collaboration with the Extractives Global Programmatic Support (EGPS) Multi-Donor Trust Fund, the African Legal Support Facility (ALSF), the International Senior Lawyers Project (ISLP) and ENS Africa under the joint management oversight of the World Bank Group's Legal Vice Presidency Unit and the Extractives Global Practice.

We would like to sincerely thank the authors and peer reviewers (who contributed valuable time and expertise, on a pro bono basis) for their commitment to the development of this Toolkit. The process of creating this toolkit benefited enormously from their experience, dedication, tenacity, and healthy debate.

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Words and Expressions

Glossary

In this Toolkit, the following **words and expressions** shall have the following **meanings**:

African Charter: The African Charter on Human and Peoples' Rights (Banjul Charter);

ALSF: The African Legal Support Facility, an international organization dedicated to providing legal advice and technical assistance to African countries, and developing innovative tools for capacity building and knowledge management.

AMLA: The African Mining Legislation Atlas, a legislation-gathering organization, and a dissemination and capacity-building project, a joint initiative administered by ALSF and the World Bank Group (WBG).

AMV: The Africa Mining Vision, a policy framework created by the African Union in 2009 to ensure that Africa uses its mineral resources strategically for broad-based, inclusive development.

CDA: A community development agreement, typically concluded between a mining company and a community (and, in certain instances, a government) in which mining operations take place for the purpose of local development.

CDF: A community development fund established by a State or a mining company for the purpose of having the mining company contribute a certain agreed-upon percentage of their revenue for the purpose of local development.

CDP: A community development plan typically created by a mining company in consultation with the relevant local communities and the government in order to contribute to local development in compliance with the country's mining laws.

CDT: A community development trust established by a mining company as a vehicle for the local development obligations of the company.

Community: A group of people living in the same place or having a particular characteristic in common (such as language, culture, customs, etc.) and identifying themselves as one homogeneous or heterogenous collective. In the context of mining, this group can be understood narrowly or broadly as either:

- A collective of people that has the potential to be significantly negatively or positively impacted by mining operations; or
- A collective of people that has been specifically identified in a required impact assessment under the applicable environmental, social, health, and safety or other laws of the State, as having the potential to be significantly impacted either negatively or positively by mining operations; or
- A collective of people mutually agreed by the mining titleholder and the regulatory authority as the relevant community for the purposes of specific local development benefits; or
- A collective of people residing within a prescribed proximity of the mining right area.

Community Development: A process through which community members are supported by mining companies who will cater to the needs that are important to them;

Community Engagement: A process prescribed in mining and/environmental laws through which a mining company meaningfully consults with a community in relation to any aspect of the country's mineral regulation, and all phases of their mining operations. This process shall include the mining company enabling the community to fully appreciate the consequences and implications of the intended operations on their livelihoods, ways of living, surrounding environment, and the like. It also involves the mining company obtaining input from the community and taking their input into account prior to finalizing its plans, programs, applications, and details for the mining titles and operations, environmental remediation, local development, and mine closure;

Community Participation: Refers to the level of involvement of communities in the preparation and conclusion of local development initiatives, including CDAs, CDFs, CDPs, and CDTs; and shall also include any form of community equity or nonequity interest in the mining operations;

CSR: Corporate Social Responsibility, which encompasses all voluntary and discretionary initiatives adopted by mining companies that are aimed at contributing to the needs of the community;

ESG: Environmental, social, and governance considerations that are nonfinancial in nature, and that are used to impose certain regulatory and other obligations and responsibilities on companies. These factors are also important for companies that are in the process of raising project financing;

FPIC: The requirement applicable in certain mining jurisdictions that no mining title can be granted and/or no mining operations can commence until the community has given its free, prior, and informed consent;

Guiding Principles: The United Nations Guiding Principles on Business and Human Rights, endorsed by the United Nations Human Rights Council in 2011, to assist States and companies in preventing, addressing, and remedying human rights abuses committed in business operations;

Guiding Template: The Guiding Template is AMLA's flagship knowledge product which outlines a menu of legislative solutions to assist countries prepare or revise their mining laws. It can be found on the AMLA website at <https://a-mla.org/en/guidingtemplate>

Local means either

- Any community as defined above; or
- The district or region within a State in which a mining company conducts its mining operations; or
- The nation/country in which a mining company undertakes its mining operations, depending on the context in which the word “local” is used;

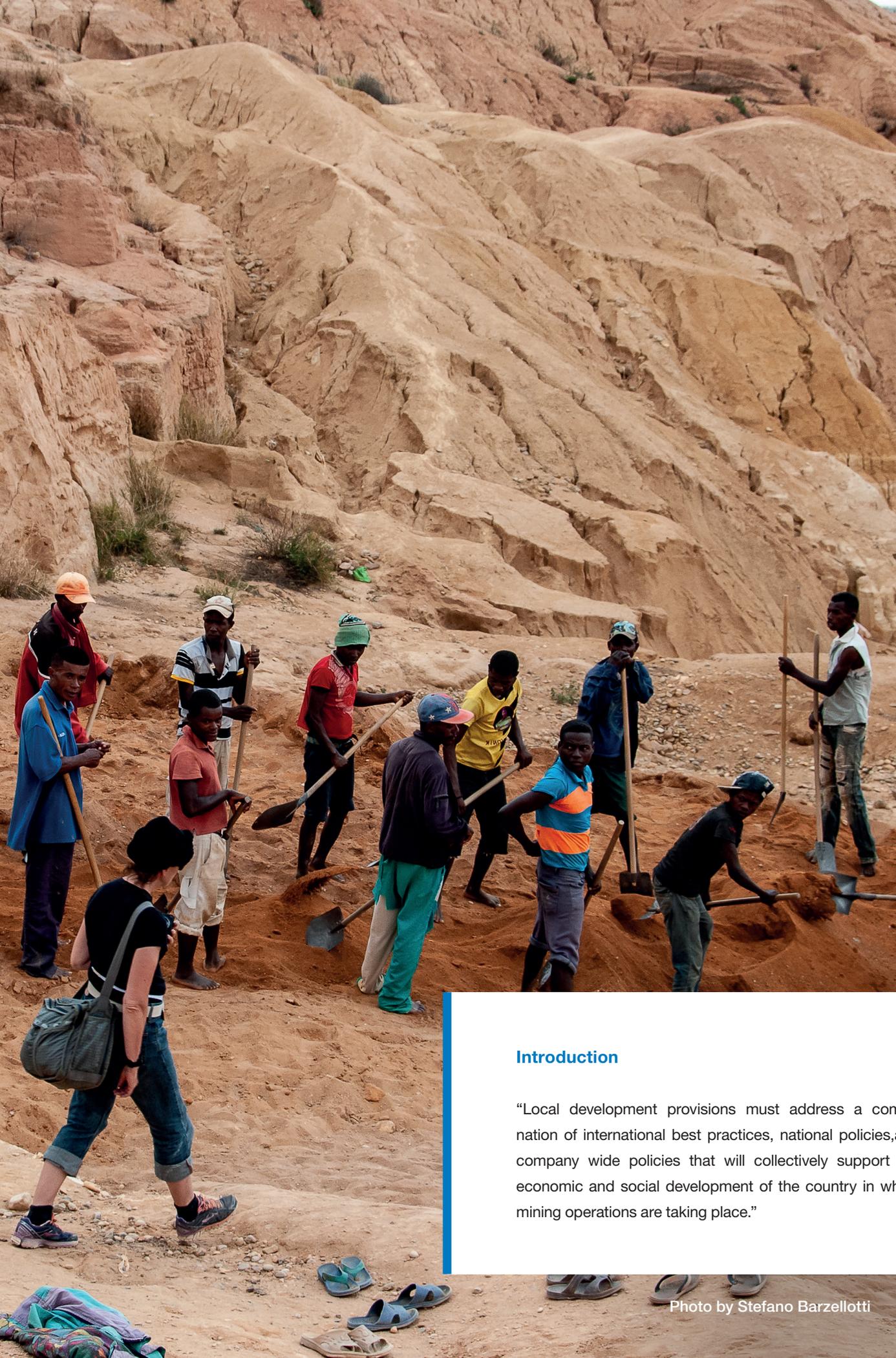
Local Content: The requirements and obligations imposed on mining companies by legislative, contractual, or mining title provisions that require the mining company to preferentially (i) procure locally produced goods and services; or (ii) preferentially employ local individuals, such as citizens of the State, or communities impacted by the mining operations;

Local Development: An integrated system of improving local infrastructure, living conditions, and economic activity, which is typically the responsibility of government. By virtue of mining laws this translates into certain obligations mining companies take on in exchange for their exploitation of a nation’s mineral resources;

Toolkit: This toolkit, which relates to local development and community engagement, was developed by the WBG in partnership with the ALSF to assist African States with regard to the tools required to implement mining laws and achieve the policy objectives pertaining to local development and community engagement;

SLO: A social license to operate; a term often used to refer to the acceptance or approval by local communities and relevant stakeholders of mining companies and their mining operations; and

WBG: The World Bank Group, which is made up of the following entities: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for the Settlement of Investment Disputes.



Introduction

“Local development provisions must address a combination of international best practices, national policies, and company wide policies that will collectively support the economic and social development of the country in which mining operations are taking place.”

Photo by Stefano Barzellotti

African Mining Legislation Atlas (AMLA)

1. Introduction

The African Mining Legislative Atlas (AMLA) provides free online access to the mining laws of 53 African countries. Developed by the World Bank in 2014, this legislative database can be accessed at www.a-mla.org. In addition to compiling mining laws and regulations, AMLA provides users with a Guiding Template for mining laws. The Guiding Template, developed in 2017, sets out the key elements of a mining law, and provides representative examples of provisions from various African. See <https://a-mla.org/en/guidingtemplate>. The Guiding Template addresses the following topics: (i) General Topics; (ii) Mineral Rights; (iii) Fiscal Terms; (iv) Environment; and (v) Local Development, Labor, Health, and Safety. Building on the Guiding Template, the World Bank Group and the African Legal Support Facility (ALSF) have developed this toolkit, which proposes strategies for enabling practical implementation of the Guiding Template's provisions on local development and community engagement. In many cases (including in places where legislative requirements are already in place), the finer details of how these requirements will be implemented and translated into practice on a project-to-project basis are left to be determined by the specific mining contracts negotiated between States and mining companies. In today's African context, there is a case for the imposition of both positive and negative obligations on mining companies in order to ensure that the national policies of a State translate into effective local development and community engagement, and meaningful consultation with the communities that are affected.

More specifically, this toolkit will, among other things, provide guidance on the following topics:

- General and contextual considerations;
- Justification for the imposition of positive obligations on mining companies in respect to local development;
- A working synopsis of the principles of African mineral regulation;
- Community engagement and consultation;
- Local employment and training;
- Local goods and services;
- Infrastructure; and
- Vehicles for implementing local development.

Local development provisions must address a combination of international best practices, national policies, and companywide policies that will collectively support the economic and social development of the country in which mining operations are taking place. These policies typically focus on many of the following areas:

- Building the capacity of workers, goods, and service providers;
- Transferring knowledge between mining companies and the local population;
- Construction and the ensuing use of infrastructure (roads, bridges, railroads, etc.) in surrounding communities; and
- Other projects that increase access to health, education, and/or other necessities to support the communities around the mining sites.



General and Contextual Considerations

“It is in the State’s interest to scrupulously vet applicants for mining titles, and to carefully guard the nation’s precious and finite natural resources, since the risk that the grant of a mining title to a company that is incapable of complying with both negative and positive obligations could have devastating consequences for the people.”

African Mining Legislation Atlas (AMLA)

2. General and Contextual Considerations

The guiding principles for establishing sound mineral regulatory frameworks that foster national development are considered in this section of the toolkit. This is because local development is not a standalone topic; rather, it forms an integral part of the broader mineral regulatory framework. Our starting point will be the foundational principle of *sovereignty* over national resources.

2.1. Sovereignty over Natural Resources

No discussion of natural resources can be complete if it does not include, as its prologue, the discussion of the universal principle of the *sovereignty* of nations over their natural resources (the “*Sovereignty Principle*”), which occurs inside of the geopolitical space that is the nation state. The Permanent Sovereignty Principle is best articulated in *United Nations General Assembly Resolution 1803 (XVII)* of December 14, 1962.¹

In keeping with the Permanent Sovereignty Principle, just about every resource-rich country in the world has a set of laws governing the relationship between the State and its minerals, including rules regarding the exploration and exploitation of mineral resources.

In exercising permanent sovereignty over natural resources, States have both a sovereign right (the ultimate authority over resources), and a sovereign duty (to use that authority in the interests of the

1 United Nations General Assembly Resolution 1803 (XVII) available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/resources.pdf>

people); this in effect puts States at the service of their people.²

The Sovereign Principle was fully admitted by the International Court of Justice as a customary rule of public international law under various case laws including the *North Sea Continental Shelf case (1969)*,³ and *Congo v. Uganda*.⁴

As an exercise of sovereignty over natural resources, the State must decide to whom, how, and under what terms and conditions it will allocate a mining title. In the African context, States must consider embedding local development requirements in order to ensure that the nation benefits from the exploitation of natural resources, as part of the exercise of this right.

States will surely wish to grant a mining title to a company that will develop the resource responsibly, honor its obligations, and comply with the applicable laws, as well as the prevailing environmental and social governance (ESG) issues, including issues of community development. It is therefore in the State's interest to scrupulously vet applicants for mining titles, and to carefully guard the nation's precious and finite natural resources, since the risk that the grant of a mining title to a company that is incapable of complying with both negative and positive obligations could have devastating consequences for the people.⁵

2.2. Regional Harmonization and Balancing

African mineral regulation is very fragmented for historical reasons. In recognition of this fact, and with the aim of improving what Africa can derive from its mineral resources going forward, the African states have adopted the Africa Mining Vision (AMV). The purpose of the AMV is to⁶:

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- 2 See Cotula, L. *Reconsidering Sovereignty, Ownership and Consent in Natural Resource Contracts: From Concepts to Practice*. European Yearbook of International Economic Law, page 7 available at https://doi.org/10.1007/8165_2018_23
 - 3 International Court of Justice Rep. 3, 41, International Law Reports, 29.
 - 4 See Case Concerning Armed Activities on the Territory of the Congo (*Dem. Rep Congo v. Uganda*). Report of Judgment, 2005 ICJ (Dec 19), as cited by Sangwani P. Ng'ambi in *Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans*, 12 Loy. U. Chi. Int'l L. Rev. 153 (2015) at 158 and the general discussion on the Sovereignty Principle, 154-157 available at <https://lawcommons.luc.edu/lucilr/vol12/iss2/3>
 - 5 The allocation of a single mineral right can affect a nation for generations to come, according to Michael Stanley and Ekaterina Mikhaylova in "*Mineral Resource Tenders and Mining Infrastructure Projects Guiding Principles*", World Bank Group Oil, Gas and Mining Unit: Extractive Industries for Development Series No. 22, September 2011, 2 available at <https://documents1.worldbank.org/curated/en/420541468149681572/pdf/655030NWP00PUB0570B0MiningSectorWEB.pdf>
 - 6 Africa Mining Vision available at <https://au.int/en/ti/amv/about> and Ushie Vanessa in *From Aspiration to Reality Unpacking the Africa Mining Vision*, Oxfam Briefing Paper, March 2017 available at <https://au.int/en/ti/amv/about>

- Promote the transparent, equitable, and optimal exploitation of mineral resources to underpin broad-based, sustainable growth and socioeconomic development;
- Provide guidance on how African States may formulate policy and regulatory frameworks to maximize the development outcomes of mineral resource exploitation on the continent;
- Promote the creation of local value, driven by the strategic use of mineral resources in Africa;
- Recognize the contribution of artisanal and small-scale mining operations in the context of local economic development, and promote women's rights and gender justice within the African mining industry;
- Establish a progressive fiscal regime that can curb the hemorrhaging of the continent's resources through tax evasion and avoidance, and illicit financial flows from the mineral sector;
- Uphold the principle of free, prior, and informed consent for mining-affected communities, and address the social and environmental impacts of mining; and
- Implement, through subsidiary policy or legislative instruments, the country's mining vision while maintaining an integrated strategic vision for national development.

Despite the adoption of the AMV and concerted efforts by various African states to modernize their mineral regulation frameworks, mineral regulation remains fragmented on the African continent. The result of this is that "forum-shopping" investors continue to pit one African state against another in the pursuit of the most liberal and investor-friendly regime, potentially to the detriment of local development.

In as much as African States must take into account the investment requirements of the mining industry (which are commonly referred to as the "general investor framework"⁷), this must not happen at the expense of local development. African States must, therefore, impose a set of both positive and negative obligations that are designed to balance the competing interests of the mining industry and national interests (especially regarding local development).

In considering imposing these obligations, the practical dynamics of community development must be considered. These include:

- Traditional systems of governance;

7 E. Bastida et al. 2005. *International and Comparative Mineral Law and Policy: Trends and Prospects.* Clewer Law International 73-76 available at http://library.dundee.ac.uk/F/?func=direct&local_base=DUN01&doc_number=000502976

- Customary practices;
- Cultural and indigenous religious practices;
- The effects of the migrant labor system;
- Multiplicity of tribal and language groups;
- Wide-scale poverty, especially among rural Africans;
- The historical relationship between communities and the soil upon which mining takes place;
- The historically muted or minimal contribution of mining companies to impactful community development projects;
- The divisive nature of mining in host communities; and
- Anti-bribery, anti-corruption, and transparency issues.

It should be noted that the above is a nonexhaustive list of key considerations.

Ultimately, the above-mentioned investment and local development factors must be balanced to create an effective African community development framework. To help achieve this, *this toolkit considers the perennial question of whether local development requirements should be voluntary or preemptory. Put differently, should local development be left as a loose and voluntary matter for the attention of the community and the holder of the mining title? Or should it proactively impose a set of clear and positive obligations on the holders of mining titles?* In our assessment, in the African context, positive local content must be an obligation, but the modalities of its implementation should be flexible. In this toolkit only the following modalities (which are by no means exhaustive) will be considered:

- Community Development Agreement;
- Community Development Plan;
- Community Development Fund; and
- Community Development Trust.



Justification for the Imposition of Positive Obligations on Mining Companies Regarding Local Development

“African States must ensure that ESG considerations form part of mineral regulation, especially in regard to local development.”

African Mining Legislation Atlas (AMLA)

3. Justifications for the Imposition of Positive Obligations on Mining Companies Regarding Local Development

3.1. From Shareholder Value to Stakeholder Inclusivity

Historically, the core priority of mining companies was to protect the interests of their shareholders and to deliver shareholder value. In fact, shareholder value was considered to be so important that it was often delivered at the expense of the environment, local development, and the national interest. Historically, the role of the company was the pursuit of private enterprise, without any obligations imposed by the State in relation to environmental and social impacts.

Because of the massive and often negative impact that the operations of mining companies have had on societies and the environment, the role of the company has evolved. Modern companies can no longer justifiably pursue shareholder value to the exclusion of the interests of other stakeholders. Modern company laws require companies to protect the interests of various stakeholders, including shareholders, local communities, and state and civil society.

Mining companies tend to be some of the largest corporations in the world, with major socioeconomic impacts. Accordingly, these companies have a large role to play in society. That role includes: (i) looking after the environment in which they operate; (ii) empowering local communities; and (iii) assisting local States by making appropriate resources available for the provision of local services.

African States must therefore ensure that they are regulating the mining sector in a manner that is consistent with the modern role of the company, not the historical role. In other words, ***African States must now impose positive legal obligations on mining companies in relation to their environmental and social impacts.***

3.2. The Changing Landscape: From CSR and Voluntarism to Binding Legal Obligations

Traditionally, the dominant approach of companies' human rights obligations has been voluntary or discretionary. ***Voluntarism*** was manifested in the concept of corporate social responsibility (CSR). CSR, although it is an inherently vague concept, can loosely be defined as an umbrella term for debates that deal with the "responsibilities of business and its role in society."⁸ CSR is said to deal with the very essence of what it means to do and be a business within the context of the purpose and ever-changing role of business within society.⁹ It has historically been viewed as being "beyond" the realm of law. It deals with everything from internal company policies on environmental, social and economic issues, to company values and corporate culture, to external CSR commitments and projects. CSR projects vary from company to company, and companies regulate their own policies; this leads to the adoption of inconsistent standards and accountability mechanisms, and weak policies regarding breaches of those standards.

With investors now giving heightened priority to ESG considerations, the way that companies do business is changing. The "S" element in CRS now includes positive contributions to the societies in which companies operate, and respect for and promotion of human rights. Mining companies are being compelled to be cognizant of both voluntary and regulatory ESG developments in order to remain relevant: this includes issues of local development. Therefore, ***African States must ensure that ESG considerations form part of mineral regulation, especially in regard to local development.***

3.3. Negative Obligations of Corporations

Unfortunately, the emphasis on States as the primary duty-bearer of human rights is symptomatic of International Human Rights Law more generally. The United Nations Guiding Principles on Business and Human Rights (The Guiding Principles) are premised on a "Protect, Respect, and Remedy" framework. The Guiding Principles are grounded in recognition of: (i) the existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms; (ii) the role of business enterprises as specialized organs of society performing specialized functions, requiring compliance with all applicable laws, and general respect for human rights; and (iii) the need for rights and

8 F. Wettstein. "CSR and the Debate on Business and Human Rights: Bridging the Great Divide." 2012. Business Ethics Quarterly 22 (4), 745.

9 Ibid.

obligations to be matched to appropriate and effective remedies when they are breached. Unlike the approach that was advocated in the UN Draft Norms, the Guiding Principles are not binding.

According to the Guiding Principles, whereas States are required to respect, protect, and fulfill human rights and fundamental freedoms, business enterprises are also required to comply with applicable laws and to respect human rights. This duty to respect requires that the duty-bearer abstains from doing anything that violates the rights of an individual; this is also known as negative obligation.¹⁰

While the remedies for businesses' breaches of their negative obligations are not always clear under human rights law, there are growing precedents globally for holding businesses accountable or responsible for their negative obligations. In the *Urbaser case*,¹¹ the International Centre for Settlement of Investment Disputes Tribunal held that under international investment law, human rights law imposes obligations on an investor not to interfere with the right to water (a negative obligation). *Okpabi v. Shell*¹² and *Four Nigerian Farmers v. Shell*¹³ were claims brought by Nigerians in the United Kingdom and the Netherlands on the basis of parent company liability for environmental harms committed by subsidiaries in Nigeria that included contamination of water resources that rendered water sources unsafe for drinking, fishing, agricultural, washing, or recreational purposes. Some of the aspects of these claims were successful; this suggests a growing legal acceptance globally that corporations (even at the parent level) must be held responsible for the activities of their subsidiaries where certain requirements are not met, including a degree of control.

3.4. Imposing Positive Obligations on Mining Companies

Given the preceding discussion, the question remains, to what extent it would ever be appropriate to hold corporations responsible for their positive obligations?

African States must impose positive obligations on companies through suitable amendments to existing legislation, or through the adoption of new legislation that is consistent with the modern trends of regulating corporate behavior. These include elevating ESG considerations into positive legal obligations. These obligations may also be imposed by way of regulations or secondary legislation when the legislative process to amend existing laws or to introduce new laws is cumbersome.

10 B. Meyersfeld. 2020. "SA Constitution and Human-Rights Obligations of Juristic Persons." *The South African Law Journal* 137 (3).

11 *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26 available at <https://www.italaw.com/cases/1144>

12 [2021] UKSC 3

13 [2021] ECLI:NL:GHDHA:2021:132 (*Oruma*), ECLI:NL:GHDHA:2021:133 (*Goi*) and ECLI:NL:GHDHA:2021:134 (*Ikot Ada Udo*)

The imposition of positive obligations on mining companies by African States should **complement** the State's obligations and development objectives. The recommendation to impose positive obligations on mining companies in regard to local development should not be viewed as advocating for mining companies to **replace** the State's role with respect to such obligations contemplated in domestic and/or international law. The tools listed in this section suggest an oversight role for the State in the formation and implementation of a mining company's positive obligations.

There are various tools and modalities that can help in the implementation of positive obligations. The legislation must prescribe tools through which positive obligations are to be implemented. These tools include:

- Contractual clauses negotiated between the State and the mining company;
- The incorporation of positive obligations as conditions that form part of a mining titleholder's mining title;
- Permits and titles;
- Plans and programs; and
- CDAs.

When implementing any of these tools, the presence of the agreement or form is only as good as its language. Below are two case studies that illustrate very different outcomes, depending upon the specificity and strength of the language used.

Case Study #1

Positive Obligation in Legislation: No Prescribed Implementation Tool

In several African jurisdictions, local development and community engagement are provided for in mining and ancillary legislation. Typically, the legislation has language requiring a mining company to contribute to local development by either undertaking specific projects or activities, or entering into partnership with state institutions to deliver local development.

In many jurisdictions, besides the statutory provision dealing with local development, there are no prescribed tools for implementing the statutory requirement. In some jurisdictions, secondary legislation (such as regulations) do not even address how compliance with local development requirements must be achieved. In other jurisdictions secondary legislation detailing compliance is present: however, even in these jurisdictions, very often the implementation tool is not prescribed.

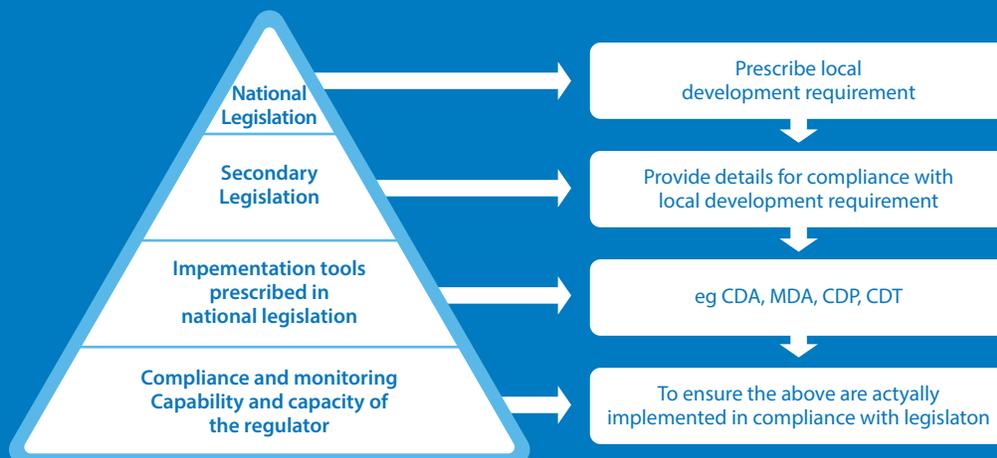
The consequence of this gap is devastating. Where there are no prescribed tools, mining companies are typically at liberty to negotiate the nature and extent of their own compliance with local development requirements. Often this leads to mining companies negotiating terms very favorable to them and contrary to the national interest and local development.

African States must avoid this situation. This toolkit recommends that local development requirements must be:

- Prescribed in national legislation;
- Adumbrated in secondary legislation (giving details as to the specific requirements, manner, and nature of compliance);
- Implemented through prescribed implementation tools such as mining titles, mining contracts, CDAs, CDPs, CDTs, and any other instruments that may be suitable in particular jurisdictions.

Perhaps the greatest weakness of mineral regulation on the African continent is the capacity of the State to monitor compliance and enforce prescribed laws. No successful implementation of a robust compliance framework can succeed unless the regulator has the capacity and capability to monitor and enforce compliance. Therefore, this toolkit advocates the development of state capacity to monitor and enforce compliance.

Below is an illustration of a robust local development framework.



Case Study #2

Positive Obligation in Legislation: Compliance in Form and Substance to Prescribed Implementation Tools

The fact that a robust local development framework is in place is not, per se, a panacea. African States must be careful of simulated compliance. The form of compliance is important, but the substance of compliance is decisive. In other words, African States must not rest on their laurels just because mining companies have filed the prescribed implementation tools. The regulator must ensure that there is **substantive** compliance, not just formal compliance.

Typically, regulators have developed checklists of the documents required to demonstrate compliance with, inter alia, local development requirements. These checklists are an important first step of assessing compliance. The next critical step is the evaluation of the content of the implementation tool. It is this content that is decisive.

When national legislation prescribes local development and its implementation tool(s), and the regulations detail the requirements thereof, it is not enough for a mining company to have filed copies of the tools. There are many examples on the African continent of mining companies that have masterfully complied with the **form** of the requirements but not with the substance. As the saying goes, the devil is in the details.

Where national laws require local development to be in line with the State's local development plans and programs, mining companies must ensure that their implementation tools and the projects undertaken are both substantive and in accordance with the State's those plans and programs. It is not enough for mining companies to recite the State's development plans and programs without making specific, and measurable, undertaking of their requirements and obligations.

To help African States evaluate substantive compliance, the illustration below is instructive.

Laws, Policies, and Plans	Implementation Tool
National Legislation	<ul style="list-style-type: none"> · Clear Plans
Regulations	<ul style="list-style-type: none"> · Substantive consultation with communities, local authorities, and regulators
Local Laws	<ul style="list-style-type: none"> · Specific, measurable projects
Local Development	<ul style="list-style-type: none"> · Specific financial and resource undertakings
Plans and Programs	<ul style="list-style-type: none"> · Specific time frames for project delivery
Mineral Policies	<ul style="list-style-type: none"> · Specific beneficiaries
Socioeconomic Policies and Plans	<ul style="list-style-type: none"> · Advancement of local economies through tendering processes · Where PPPs are used, clear roles and parameters of responsibility, and the transition to the State taking over the project should be defined. · Clear delineation of State and mining company roles

Toolbox Item 1

In modern mineral regulation, the role of the mining company has evolved to include duties to help develop the community and work with States in the provision of infrastructure and services.



African Mineral Regulation: A Working Synopsis

“The specific modalities for implementation, the details of regulation and the like must, of necessity, be aligned with the local context in each case, and be tailored to the unique needs of each country.”



African Mining Legislation Atlas (AMLA)

4. African Mineral Regulation: A Working Synopsis

The African continent is home to some of the world's most valuable mineral resources. For this and for other reasons, Africa has experienced exploitation in its colonial past. Despite its mineral wealth, Africa is classified as poor in global economic terms (euphemistically called “developing”). In particular, many of the mineral-producing regions of the continent and every mineral-rich country on the continent are yet to benefit from mineral development.

Given its colonial history, many African legal systems were inherited from the previous colonial powers and have fused them, to a greater or lesser extent, with the African customary laws that are applicable in different parts of the continent. In addition to this, the post-colonial African States have developed laws to address the prevailing local circumstances and requirements. In doing so, these States have been influenced and sponsored by a myriad of international agencies, consultants, and advisors.

The result of all of this is a plethora of mining laws across the continent. These laws have been helpfully collated on the AMLA Platform.¹⁴ For our present purposes, it is worth noting that the topics of local content and community participation are dealt with very differently across the continent. A useful summary of how these topics are dealt with is found in Appendix B.

14 “African Mining Legislation Atlas Platform accessible via” <https://a-mla.org/en>

A survey of various African mining legislation shows that there is no uniform approach to regulating local development and community participation. In some countries, local development is embedded, to a lesser or greater extent, in mineral laws as a positive obligation. In other countries, it is a set of voluntary practices.

Despite these varied approaches to local development, the need for local development is uniform across the continent. The question that arises, therefore, is why do African countries deal so differently with what is essentially a common African challenge? The answer to this question may be beyond the scope of this toolkit. Various factors account for the different treatment, ranging from limited State capacity, competition among African States for mining investment, and under- and over-reliance on local development as a mechanism to help States in their developmental agendas, among other things.

Given these realities, the approach in this toolkit is to propose a common theory of local development: that is, ***without usurping the role of the State, each mining titleholder must help develop the communities in which mining takes place as one of the trade-offs of benefitting from the exploitation of the natural resources of Africa.*** The specific modalities for implementation, the details of regulation and the like must, of necessity, be aligned with the local context in each case, and be tailored to the unique needs of each country.

At the heart of this theory are vexing questions of community participation, consultation, and consent. These issues are discussed in the next section.



Community Engagement and Consultation

“Defining the relevant “community” that will be the subject of consultation or the agreement can be challenging when the affected community is diverse; when there are varying needs and demands within the community; and where the members within the community have varying abilities to express their needs and demands.”



African Mining Legislation Atlas (AMLA)

5. Community Engagement and Consultation

5.1. Brief Overview

Community participation is part of the trust-building process that is necessary in order for developers to earn a social license to operate (SLO); and it has become a standard of corporate social responsibility (CSR).¹⁵ Although it may be easy to compile examples of participatory activities, it is harder to concretize a definition of the term.¹⁶ This term is open to various interpretations, depending on who is managing the participation, as well as on different geographic regions and cultures.¹⁷ Nevertheless, when it comes to consultation, “meaningful participation” is required. Some suggest that “meaningful participation” or “meaningful consultation” requires actual consent from the community in regard to mining projects.¹⁸ However, it more frequently refers to a scenario in which the relevant stakeholders are engaged with the community prior to the commencement of a particular project, and sometimes prior to the decision to issue or grant a mining title.

15 R. Goodland. 2004. “Free, Prior and Informed Consent and the World Bank Group” Sustainable Development Law & Policy 4 (2).

16 Robert Pritchard ‘Safeguards for Foreign Investment in Mining’ in E. Bastida et al, “International and Comparative Mineral Law and Policy Trends and Prospects” (2005), 76 at 266.

17 *Ibid.*

18 *Ibid.*

Consultation requirements are indicative of a serious concern for the rights and interests of the relevant parties who must be consulted, which is ultimately related to the potential impact of mining operations on local communities.¹⁹ Public participation must, therefore, be viewed as contributing to sustainable development.²⁰

In undertaking consultation, consultative processes are used by companies and States to engage the community about the potential for a mining project; educate it about the impact of the project; and determine the community's position on the issue.²¹ At times, consultative processes are associated with conflict, since they may not align with the traditional decision-making processes used by Indigenous societies.²² Moreover, consultative processes have the potential to weaken and fragment communities, particularly through the divide-and-conquer tactics used by some mining companies. In addition, these processes often replace traditional decision-making authority with less cohesive forms of decision-making, thus exacerbating the problem of community fragmentation.²³

The legal authority for consultation takes primarily four forms: constitutional protection, statutory protection, international instruments, and contracts.²⁴ Constitutional protection is a powerful tool for securing consultation rights, since the rights derive from the supreme law of the land and therefore cannot be overridden or overturned by the State.²⁵ However, this form of protection is rare. Consultation may also be provided for in statutes or regulations requiring community consultation in the mining life cycle. Many countries include consultation during their environmental impact assessment process.²⁶

International treaties also have provisions for consultation rights. For example, the *International Labour Organisation Convention 169* states that States must consult with Indigenous and tribal peoples within their countries regarding development projects and other activities that are affecting them, and must lay down criteria for these consultations.²⁷ Although countries that have ratified treaties are legally bound to implement them, there is often a lack of available enforcement mechanisms to compel compliance.²⁸

19 *Bengwenyama Minerals (Pty) Ltd and Others v. Genorah Resources (Pty) Ltd and Others*. 2011 (3) BCLR 229 (CC) paragraph 63.

20 *Supra* Note 16, 268.

21 S. Bass, P.S. Parikh, R. Czebiniak, and M. Filbey. 2003. "Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities." Environmental Law Institute 32.

22 *Ibid*, 32.

23 *Ibid*.

24 *Ibid*, 28.

25 *Ibid*.

26 *Ibid*. South Africa is a case in point.

27 United Nations Draft Declaration on the Rights of Indigenous Peoples, E/CN.4/ SUB.2/1994/2/Add.1 (1994), available at <http://www.usask.ca/nativelaw/ddir.html>

28 *Supra* Note 21, 29.

Where consultation is not required through one of the abovementioned mechanisms, the State may nevertheless impose a contractual obligation on a mining company to reach agreement with a community; this involves consultation. The strength of the abovementioned protections is dependent on the adequacy of the legal authority in any particular jurisdiction. The following sections of the toolkit provide more detail on the key issues to consider in developing a framework for community consultation. These include: i. distinguishing between “consultation,” “consent,” and “agreement”; ii. defining the scope of what constitutes a “community”; iii. community representation; iv. the role of the State; and v. timing of the consultation.

This part of the toolkit should be read together with the vehicles and modalities for implementing community engagement contained in the appendices.

5.2. “Consultation,” “Agreement,” or “Consent”

One of the main ways to ensure sustainable benefits from mining projects for local communities is to require “consultation,” “agreement,” or “consent” with the local community.

• “Consultation”

“Consultation” is a popular approach that has been adopted across the African continent. As discussed in paragraph 5.1 above, depending on the interpretation adopted, consultation refers to meaningful engagement with communities, which enables their direct participation in mining projects. Although some authors suggest that consultation actually requires free, prior, and informed consent, in most jurisdictions on the continent where it is used, it does not equate to consent, and where a community objects to a mining project or there is a failure to reach agreement, the project may still go ahead in some instances. However, the SLO will be lacking, which might inhibit the longevity or stability of mining operations.

Angola’s *Mining Code*²⁹ requires the holders of mining titles to create consultation mechanisms that allow community sites that are affected by mining projects to actively participate in decisions concerning the protection of their rights, within constitutional limits. Consultation is mandatory in those cases where mining projects may result in destruction or damage to material, cultural, or historical assets belonging to the local community as a whole.³⁰

29 [Lei n. 31/11 - Aprova o Código Mineiro](https://a-mla.org/en/country/law/25) available at <https://a-mla.org/en/country/law/25>

30 *Ibid*, Articles 16 and 17.

Similarly, South Africa's *Mineral and Petroleum Resources Development Act 28 of 2002* requires consultation with “interested and affected persons,” which includes the community, prior to the granting of a mining title.³¹

- **“Agreement”**

A number of jurisdictions on the African continent require mining companies to conclude CDAs with the affected communities. For example, the Nigerian *Minerals and Mining Act 2007*, requires the holder of the relevant right and the host community to conclude a CDA or other such agreement that will ensure the transfer of social and economic benefits to the community.³² Where there is a deadlock in finalizing the CDA between the community and holder, Sierra Leone's *Mines and Minerals Act 12 of 2009* provides for referral to the minister responsible for mineral resources (in consultation with the local council) for a resolution.³³

- **“Consent”**

The concept of free prior informed consent (FPIC) has not gained much traction on the African continent; consequently, this toolkit discusses the concept primarily theoretically, since there are to date few tangible examples from African jurisdictions. Uganda is one of the few countries that uses the concept of FPIC as part of its mining laws, as evidenced in section 78(1)(b) of the country's Mining Code.³⁴ FPIC is an international human rights law principle grounded generally in the *United Nations Declaration on the Rights of Indigenous Peoples*,³⁵ the *Convention on Biological Diversity*,³⁶ and the *International Labour Organization Convention 169*,³⁷ all of which provide that all peoples have the right to self-determination and to freely pursue their economic, social, and cultural development. In the African context, the *African Charter on Human and Peoples' Rights*³⁸ is also relevant, and in this regard, the right to self-determination in Article 20;

31 Section 10 of South Africa's *Mineral and Petroleum Resources Development Act 28 of 2002* available at <https://a-mla.org/en/country/law/836>

32 Section 116(1) and 117 of Nigeria's *Minerals and Mining Act, 2007* available at <https://a-mla.org/en/country/law/3>

33 Sections 138 and 139 of Sierra Leone's *Mines and Minerals Act 12 of 2009* available at <https://a-mla.org/en/country/law/4>

34 Uganda's *Mining Act, 2003* available at <https://a-mla.org/en/country/Uganda>

35 The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, 2007 available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

36 *Convention on Biological Diversity, 1992* available at <https://www.cbd.int/convention/text/>

37 *Indigenous and Tribal Peoples Convention, 1989 (No. 169)* available at https://www.ilo.org/dyn/normlex/en/fp=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/Document

38 *African Charter on Human and Peoples' Rights, 1986* available at <https://www.achpr.org/legalinstruments/detail?id=49>

the right to development in article 22(1); and the right to information in Article 9 of the *African Charter* are also relevant.

In the famous case of the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,³⁹ the African Commission for Human and Peoples' Rights held that:

"[In] any development or investment projects that would have a major impact within the [relevant territory], the state has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions."⁴⁰

FPIC therefore requires consent in order for development by a community to be considered:

- "Free" (Consent is given voluntarily and is not coerced, nor induced by misrepresentation or undue influence);
- "Prior" (Consent should be granted before any decision is taken); and
- "Informed" (All of the relevant information bearing on the subject matter in relation to which consent is required must be made available to the person(s) from whom the requisite consent is sought).⁴¹

FPIC therefore seeks to ensure that:

- Local communities are not coerced or intimidated;
- Consent is properly sought and freely given;
- The person whose consent is required is provided with full and reliable information relating to the scope and impact of the subject matter regarding the consultation; and

39 2009 AHRLR 75 (ACHPR 2009) at paragraph 291

40 The Endorois decision was cited by the South African Constitutional Court in *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* (CCT265/17) [2018] ZACC 41 (25 October 2018) paragraph 72. See also Ashukem *"Included or Excluded: An Analysis of the Application of the Free, Prior and Informed Consent Principle in Land Grabbing Cases in Cameroon."* 2016. 19 Potchefstroom Electronic Law Journal at 28 cited at paragraph 71 of the Maledu judgment.

41 *Ibid.*

- They have the choice to either give or withhold their consent.⁴²

In South Africa, two recent judgments of the Constitutional Court have elevated the FPIC of informal land rights holders, whose rights are protected in terms of the *Interim Protection of Informal Land Rights Act, 1996 (IPILRA)*⁴³ in relation to the rights and obligations of mining title holders.⁴⁴ Both judgments concluded that:

- IPILRA requires consent from community members/the community in accordance with each particular community's custom and traditions, if they are to be deprived of their right to land as contemplated in IPILRA;
- The mining activities that were contemplated in both situations constituted a deprivation, which in turn required consent; and
- Consent was required before the Minister of Mineral Resources and Energy could grant a mining title, in these circumstances.

FPIC is not about a conflict of mining legislation and legislation dealing with informal land rights. FPIC is rather a policy choice regarding whether the State's allocation of the right to mine should be subjected to obtaining FPIC before the exercise of such a right.

While FPIC has gained traction and may eventually be recognized as a principle of customary law, individual state practice is not sufficiently consistent or widespread to confirm such a right as customary law.⁴⁵

In negotiations and consultations with mining companies, there is usually asymmetry of knowledge between the communities and the mining companies. In order to engage meaningfully in consultations, communities require access to information.⁴⁶ The right of access to information has been characterized as an important component of the right to freedom of expression, which is a fundamental human right.⁴⁷ Without the requisite information, all of the other public participation rights are nugatory.⁴⁸ This, however, must be balanced against

42 Ibid paragraph 73

43 *Interim Protection of Informal Land Rights Act 31 of 1996* available at <https://www.gov.za/documents/interim-protection-informal-land-rights-act>

44 Supra Note 40.

45 Supra Note 21.

46 Supra Note 19.

47 Supra Note 16, 270.

48 Ibid.

competing rights such as confidentiality and the proprietary rights of the disclosing party. Often communities have no experience with large-scale mining projects, and therefore cannot draw on their own experiential knowledge base. They may lack access to project information, and even when such information is provided, it may be unclear, highly technical, or not translated into the local language. They also may lack certain types of information, such as the economic value of resources or the short, medium, and long-term impacts of the mining process, which puts them at a disadvantage in the negotiation process. These informational hurdles must be overcome in order for communities to be able to participate on an equal footing.⁴⁹

The nature of the information that is being disseminated must also be considered. Even when the mining company engages in educational or informational efforts, the information provided may not always be balanced or factual, and may be unfairly tilted toward the mining interests.⁵⁰ Deadlocks may occur during consultations with communities. It is therefore essential that appropriate conflict resolution mechanisms are put in place to deal with disputes. These may include referral to an independent arbiter, a court, a mediator, or a state official.

The importance of institutional capacity within governmental departments in the context of consultation, and in the process of the negotiation of CDAs by the mining company and the community cannot be overstated.

Institutional capacity is critical not only where there is an asymmetry of knowledge between communities and mining companies, but also when the terms of the CDAs are negotiated. To this end, State officials must be authorized in terms of a law of general application, and practically equipped to facilitate the negotiation process between the mining company and the community in order to ensure that equitable community projects are agreed upon in the CDA.

There are broadly two mechanisms for determining consent:⁵¹

- **Direct Representation through Voting**

Direct representation through voting is an effective way of accounting for the voices of various stakeholders. This mechanism is limited, however, in that it leaves open the minimum threshold number required in votes to establish whether consent has been obtained.⁵²

49 Supra Note 21, 33

50 Ibid, 34.

51 Supra Note 21, 31.

52 Ibid

Consent Obtained through Community Representation

It is even more of a challenge to define the threshold for consent where the community is not directly consulted and is instead indirectly consulted through its representatives or community organizations.⁵³ If all of the representatives or community organizations fail to agree, there are a variety of standards available to determine agreement. Consent should be defined in a way that ensures that the agreement is representative of the affected communities and the various factions within them.⁵⁴ This is similar to the issue of defining community representation, as discussed at 6.5 below.

5.3. What constitutes a “community”?

Defining the relevant “community” that will be the subject of consultation or the agreement can be challenging when the affected community is diverse; when there are varying needs and demands within the community; and where the members within the community have varying abilities to express their needs and demands. Some of the vulnerable groups within communities, who may be impacted significantly, and negatively, by the operations, may have weaker voices, and their interests may not be represented or adequately expressed.⁵⁵

In addition to the definitions contained in the CDA, a broadening definition is proposed, where appropriate, to include labor-sending areas, migrant laborers, and all interested and affected parties impacted by the mine “in order to promote equity and avoid future conflict resulting from a lack of inclusion.” It may also be appropriate in certain instances for a State to extend the concept of a “community” to a region or province.

Once it is known who is included within the definition of a community, the affected parties will be better able to identify who must be consulted and to ensure that the relevant stakeholders are accounted for.

53 Supra Note 21, 32

54 Ibid.

55 Supra Note 21, 31.

Case Study #3

Sierra Leone Mines and Minerals Act 12 (2009)

Sierra Leone's *Mines and Minerals Act 12 of 2009* defines the "primary host community" as "the single community of persons mutually agreed by the holder of the small-scale or large-scale mining licence and the local council, but if there is no community of persons residing within thirty kilometres of any boundary defining the large-scale mining licence area, the primary host community shall be the local council."⁵⁶ Thus, in the absence of a community residing in close proximity to the mine, the "primary host community" means the local council.

Case Study #4

The Angolan Mining Code, and South Africa's Mineral and Petroleum Resources Development Act

While the Angolan *Mining Code*⁵⁷ does not contain a definition of "community". Articles 16 and 17 emphasize the consultation rights and relocation/resettlement rights of local populations that suffer displacement or disturbance of their normal conditions of accommodation as a result of mining activities. Similarly, South Africa's *Mineral and Petroleum Resources Development Act* defines a "community" as "a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community." "Historically disadvantaged persons" is defined as a particular group of persons that have hitherto been the subject of racist laws in South Africa. South Africa's definition of "community" is therefore tied to historic discrimination; but it is also tied to geographic locations.

56 Section 139(1) of Sierra Leone's *Mines and Minerals Act 12 of 2009*.

57 [Lei n. 31/11 - Aprova o Código Mineiro](#).

Where there are disputes, or where the “community” cannot be defined, provisions in mining laws that allow for interventions by local authorities to assist with defining the “community” are helpful. Sierra Leone provides for instances where the primary host community cannot be decided in its *Mines and Minerals Act 12 of 2009*, which states that clarification may be requested from the local council.

A flexible definition that provides for multiple scenarios is recommended, to ensure that all of those persons who are affected by mining operations are incorporated.

5.4. Community Representation

Communities often are comprised of a diverse group of individuals. They are also not necessarily homogenous, and they may have diverse interests in a mining project, with some members who support the project and others who do not. Depending on the size of the community, for practical reasons there have been attempts in various jurisdictions to identify community leaders or authorized representatives. Regardless of whether consultation, agreement, or consent is required, it is important to ensure that legitimate and lawful representatives of a community are engaged in the process.

In obtaining consent from representatives, or in concluding agreements following the consultation, it must be determined in each circumstance whether “community” is a legal person capable of consenting on behalf of the entire group when entering into contracts in its own name and stead. This may be a complex issue, with multiple layers of potential legal consequences regarding how the “community” is organized and defined. Rural communities typically are organized through a leadership system. Urban and peri urban communities are typically organized according to the civic political system (such as municipal systems).

Furthermore, the membership of communities is also complex. Rural communities are less mobile and dynamic and are based on kinship. Urban communities are mobile and dynamic, and are based on migration patterns. The establishment of mines introduces new migrants into urban and rural communities, including migrant workers and their families. There are many other issues, including the allocation of benefits, that then trickle into the community.

Governance of these communities is a critical aspect of resource governance, local development, and consultation. The CDA contemplated in Sierra Leone’s *Mines and Minerals Act 12 of 2009* requires the holder of a mining title to negotiate with the primary host community, or the person or entity who represents the primary host community for the purposes of CDAs.⁵⁸

58 Section 140(1)(a) of Sierra Leone’s *Mines and Minerals Act 12 of 2009*.

In some jurisdictions, for example in South Africa, tribal or traditional communities are represented by their traditional authorities, chiefs, or tribal leaders in instances where the land concerned is tribal or communal land. This is especially the case in places where the leadership of the traditional authorities is historically entrenched.

There are also jurisdictions that base representation on local customs and traditions. Section 4 of Namibia's *Traditional Authorities Act 25 of 2000*⁵⁹ states that traditional/tribal representatives are appointed based on the provisions of the traditional community's customary laws. Once appointed, the traditional representative may represent the community in a myriad of matters, including matters that relate to mineral exploitation; and they are legally required to adhere to, among other things, the provisions of the *Communal Land Reform Act 5 of 2002*.⁶⁰

While many jurisdictions are silent on the selection methods for community representatives, a practice has emerged whereby many communities vote for their representatives, and forums (or committees) are established to negotiate with mining companies. Local state authorities sometimes are part of these forums. A good example of this may be found in Namibia. Section 2 of the *Communal Land Reform Act (2002)* establishes communal land boards. Section 4 of the Act then specifies the composition of the land boards and stipulates that a land board must have, among other representatives, one representative nominated by the traditional authority of the specific area; four staff members in the public service, one of whom must be nominated by the minister responsible for land matters; and a person to represent the organized farming community within the land board's area of operation or jurisdiction. Furthermore, Regulation 30 of the regulations promulgated under this Act requires that every person who wants to carry out any prospecting or mining operations on communal land, as contemplated in the *Minerals (Prospecting and Mining) Act (1992)*,⁶¹ must notify and consult with the chief or traditional authority of the traditional community and the land board, of his or her intention to do so prior to making any application in terms of the Act. The traditional representative and the land board are then required to provide a recommendation regarding whether such application should be granted or denied, which recommendation must then form part of the applicant's application for a mining title.

5.5. Role of the State

The State can play an important role in levelling the balance of power between the community and the mining company in consultation processes. However, often this is not the case. A recent study

59 *Traditional Authorities Act 25 of 2000* (GG 2456) available at <https://www.lac.org.na/laws/annoSTAT/Traditional%20Authorities%20Act%2025%20of%202000.pdf>

60 *Communal Land Reform Act 5 of 2002* (GG 2787) available at <https://www.lac.org.na/laws/annoSTAT/Communal%20Land%20Reform%20Act%205%20of%202002.pdf>

61 Namibia's *Minerals (Prospecting and Mining) Act, 1992* available at <https://a-mla.org/en/country/law/22>

suggests that Indigenous communities perceive States to be consistently siding with companies rather than fulfilling their obligations to Indigenous peoples, and that they are usually not present when consultations and negotiations proceed.

States can help level the playing field by allocating resources to communities for building their capacity to participate in negotiations.⁶²

States can also enter into agreements with communities and/or the mining companies to protect the communities' rights. Or, rather than entering into agreements itself, the State can require or pressure the mining companies to enter into agreements directly with the community.⁶³ Where a country's laws require public consultation and hearings, a State can promote community consultation by strictly enforcing these requirements.⁶⁴

States may also support communities by developing and making freely available to them, and to the broader public, standard or template agreements that are designed to protect community interests and promote local development. In order to promote accountability and the enforcement of such agreements, local laws need to authorize the noting of such agreements by the ministry responsible for mining, and ensure that breaches of any such agreements have significant consequences for the company, and for the mining operation.

5.6. Timing of Consultation

Stakeholders must participate fully in all negotiated agreements throughout the process, from the assessment of options to final implementation, operation, and monitoring.

Community development or engagement provisions in a mining law typically address how individuals or communities who stand to be affected by the project should be consulted prior to the development of a project and throughout the mining cycle, as well as how the benefits of a mining project should be shared with them. These provisions are becoming more common in the context of best practices concerning free, prior, and informed consent (FPIC), particularly in relation to vulnerable populations (ethnic and religious minorities, women, children, etc.), often in the form of agreements.

62 Supra Note 21, 36.

63 Ibid.

64 Ibid.

Some mining laws require mining companies to consult with communities regarding specific issues; others contain general obligations to consult with communities. Still others require mining companies to enter into legal or written agreements with communities, or to set up funds for communities in line with the principle of FPIC.

States may play either an active or a passive role in facilitating negotiations between communities and mining companies. Some jurisdictions envisage the relevant State as a mediator when negotiations become static.

Toolbox Item 2

The modern African State must develop adequate laws to ensure that mining companies consult and engage with communities meaningfully regarding all aspects and stages of mining projects; and that they provide them with sufficient information, to ensure that the communities appreciate and understand both the positive and negative impacts of mining.



Local Employment and Training

“It would be advisable to ensure that mining titleholders are statutorily required to consult with the local communities that will be directly impacted by the relevant mining activities when developing and implementing recruitment or training programs, in addition to having to consult with the host country’s minister of the minerals department.”



African Mining Legislation Atlas (AMLA)

6. Local Employment and Training

6.1. Brief Overview

Local employment and training in mining projects must be understood within the lens of local content. There is no universally acceptable definition of local content but it is generally understood to be a tool used by host countries to derive economic benefits from natural resource projects by mandating or encouraging the increased use of local goods and services, the employment of locals, and the use of local raw materials in production by the mining company, among other things.⁶⁵ The Organisation for Economic Co-operation and Development (OECD) defines local content as follows:

“Local content (also referred to as “National Content” or “[Name of country or other geographic area] Content”) is generally understood to be the local resources a project or business utilises or develops along its value chain while investing in a host country. This may include employment or inputs, goods and services procured from local sources, locally hired workforces, operations carried out in partnership with local entities, development of enabling infrastructure, the improvement of domestic capacity, or the improvement of local technological capabilities.”⁶⁶

65 Berryl Claire Asiago. 2016. “Fact or Fiction: Harmonising and Unifying Legal Principles of Local Content Requirements.” 34 *Journal of Energy & Natural Resources Law* 337.

66 *OECD Collaborative Strategies for In-Country Shared Value Creation: Framework for Extractive Projects*. 2016. OECD Development Policy Tools, Paris. 22.

In the context of employment and training, the term “locals” often has a specific meaning depending on the prevailing legislation of the host country. With respect to employment and training, “local” commonly denotes:

- The nationals of a host country who by virtue of their nationality are entitled to benefit from the exploitation of the country’s natural resources. This is particularly true in countries where legislation specifically provides that the natural resources belong to the nation and that the State has been entrusted to act as a custodian or trustee thereof;
- Those who reside within the geographical area of the mining project and who will be most affected by the negative impacts of the mining operation; and
- Indigenous persons who have historical and cultural attachments to the land where the mining operation will take place.

States in various jurisdictions often address the issue of local employment and training using one of two approaches, namely:

6.1.1. Legislative/Regulatory Approach

This approach prescribes various targets, to facilitate the employment and training of locals. Depending on the legislative framework of the host country, a mining company’s obligations will usually either be included in the mining title or will be regulated contractually. Although this approach has its shortcomings, the benefits of prescribing targets include:

- Targets assist with stakeholder engagement and help mining companies comply with its statutory obligations and attain the social license to operate (SLO);
- Promotes certainty, which mitigates against project risk; and
- Targets help for fast-track skills development in line with national skills development objectives.

Some legislation requires that a mining company submit a plan that addresses employment and training during the application stage for a mineral license, and this plan forms part of the jurisdictional requirements for the granting of the license. For example in Tanzania, *Local Content Regulations (2018)*⁶⁷ require that when making an application to undertake mining

67 Tanzania’s *Mining Regulations on Local Content* (2018)

activities, contractors, subcontractors, licensees and other “allied entities” must prepare and submit a local content plan to be approved by the Mining Commission; it must include a long-term plan that corresponds with the work program and the annual content plan. This allows for oversight by the State, and helps the State to hold the mining company accountable.

Where a State elects to prescribe minimum employment and training targets, the prescribed targets must be informed by the presence of skilled labor in the country, and this must be balanced with the needs of the mining companies. If this balance is not achieved, it will inevitably compromise production. In countries where it is acknowledged that there is a gap in the presence of skilled labor, the legislation should make provision for these targets to be met progressively over a given period of time. The success of this approach requires consistent dialogue with key stakeholders.

Depending on the allocation system that a host country has adopted—that is, whether it is a licensing or a concession system—employment and training may be regulated contractually in a mining development agreement. If it is contractual, the contract is entered into between the mining entity and the host country for a specific period of time. The upside of housing local content requirements in contracts lies in the fact that the parties can create a framework that is suitable to the mining project and the specific needs of the intended beneficiaries. However, employment and training provisions usually comprise only a couple of sentences in a mining development agreement, and state institutions usually lack the capacity and resources to oversee the compliance of the contracting parties with the terms of the contract. To mitigate this risk, there should be a tool that identifies functionaries within the State who are tasked with assessing compliance. The contract should also prescribe arbitration procedures and other best practice alternative dispute resolution mechanisms in instances where disputes arise.

6.1.2. Incentive-Based/Facilitative Approach

This approach provides the State of a host country with a degree of flexibility regarding the kinds of incentives it can offer mining entities. Furthermore, since the incentive-based approach is not always contained in rigid legislative instruments, investors tend to gravitate more toward jurisdictions that prefer the incentive-based over the regulatory approach. This has the effect of giving a country that prefers the incentive-based approach the perception of being “investor-friendly.” Over time, this contributes positively to the development and growth of the host country’s local economy, and it also aides the host country’s competitiveness in the global market.

The incentive-based approach is characterized by the following:

- Non-binding commitments to employ and train locals. This usually includes language that requires the mining company to use its “best endeavours”;
- Providing state support/partnership to establish training centers, or investing a certain percentage of the company’s annual payroll in skills development;
- Fiscal incentives, usually tax-related; and
- The lack of reporting or monitoring standards.

While investors view this approach as progressive, it is not without its difficulties. The more common challenges include the following:

- The approach is premised on the assumption that mining companies will engage with local communities in good faith and voluntarily adopt employment and training measures;
- This approach usually makes it difficult to track progress and to hold mining companies accountable.

Given the discussions at paragraph 6.1.3 above, it is clear that each of these approaches has its pros and cons, and that the approaches are not mutually exclusive. According to the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, the following guiding principles are key when developing a framework that seeks to promote local employment and training:

- The creation of an employment-ready workforce to ensure that supply meets demand;
- The integration of local content policies into national policy frameworks;
- The establishment of strong monitoring and reporting processes; and
- Collaboration with industry stakeholders.

6.2. Key Issues for Consideration

6.2.1. Maturity of Mining Industry

Countries with nascent mining industries that are looking to use mineral resource endowment to facilitate growth and development will often prescribe targets aimed at job creation, skills development, and the possible creation of alternative economies after mine closure. As such,

these countries will likely want to prescribe minimum employment and training targets. To avoid failure, the imposition of targets must be guided by the availability of a skilled workforce in the country. This means that the requirements must have flexibility regarding the following:

- In order to augment the limited supply of skilled labor, immigration laws must allow for critical and expert skills to enter the sector, with requirements for mentoring and skills transfer to occur; and
- Succession plans must be in place to allow for a transition from expatriates to local employees.

Mature mining industries with a history of mineral regulation prefer to create an investor-friendly environment that encourages mining companies to voluntarily participate in programs that lead to the employment and training of locals. In light of the current rise to prominence of environmental and social governance (ESG) and the importance of attaining a social license to operate (SLO), mining companies are now more than ever eager to voluntarily participate in employment creation initiatives. Local content policies that are incentive-based are also forward-looking, and are encouraging companies to incentivize training for the high-skilled jobs that will be required by automation and new technologies.⁶⁸

6.2.2. State of Development of the Host Country

In developing a framework for employment and training, host countries will usually seek to align the framework with its national development goals. For developing countries, key considerations include poverty alleviation through job creation; skills development through the training of locals; and payments by mining companies of levies to national training funds. For developed countries, key considerations include the need to diversify the economy; and bolstering a country's existing manufacturing industry.

6.2.3. Institutional Capacity

The success of employment and training frameworks are influenced by the capacity of the relevant state institutions to administer, monitor, and enforce progress in relation to the framework. Where a State prescribes targets, state institutions must have the capacity to measure progress and to enforce compliance when necessary. Where a country lacks the necessary capacity, a less complex local content policy may be more conducive.

68 Jeff Geipel and Dan Hetherington, 'Local Content Policy: What Works, What Doesn't Work', Business Environment Reform Facility 2018 , 14

6.2.4. Consultation

The issue of consultation in the context of employment and training is a very important one. When mining entities understand the needs, skills gaps, and developmental priorities of local communities, they are better able to develop training and recruitment programs that cater to the needs of local communities in a more meaningful, inclusive, and impactful way. Notably, many jurisdictions on the African continent that impose the consultation obligation in this context often require the mining titleholder to consult with the minister of the State's minerals department. The legislation/agreements do not require the titleholder to consult directly with the local communities that will be most impacted by the titleholder's mining activities. ***It would be advisable to ensure that mining titleholders are statutorily required to consult with the local communities that will be directly impacted by the relevant mining activities when developing and implementing recruitment or training programs, in addition to having to consult with the host country's minister of the minerals department.***

Botswana is an example of a jurisdiction that places consultation obligations on mining titleholders when conducting training programs. Section 12(3) of Botswana's *Mines and Minerals Act (1999)*⁶⁹ provides that:

"The holder of a mining licence shall, in his operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement."

Other jurisdictions impose consultation obligations on mining titleholders through contractual clauses. Article 38.4 of Gabon's standard concession agreement⁷⁰ provides that:

"The Contractor must, in dialog with the Administration, train and promote its Gabonese employees. The Technical Committee for the follow-up of Oil Operations is informed of the methods and conditions for the application of this provision."

Notably, many jurisdictions that impose the consultation obligation in this context often require the mining titleholder to consult with the Minister of the State's minerals department. The legislation/agreements do not require the mining title holder to consult directly with local communities that will be most impacted by the mining title holder's mining activities. It would be advisable to ensure that mining title holders are statutorily required to consult with local communities that will be directly impacted by the relevant mining activities when developing and implementing recruitment or training programmes, in addition to having to consult with the host country's Minister of the minerals department.

69 Botswana's *Mines and Minerals Act (1999)* available at <https://a-mla.org/en/country/law/13>

70 Gabon's *Standard Concession Agreement* available at <https://a-mla.org/en/country/Gabon>

6.3. Example, Clauses and Annotations can be found in Part E of the AMLA Guiding Template on local and community development.

Toolbox Item 3

African States must ensure that their local content laws and tools help to promote the skills development and career progression of the local population, and that they build capacity in both their operations and the operations of their contractors. States can achieve this by specifying local employment requirements in laws, mining titles, and agreements.

Case Study #5

Compilation and Implementation of a National Progression Plan for Progressive Local Employment and Training

As this section of the toolkit highlights, it is necessary for States to take into consideration the drivers for local employment, as well as the realities of current local labor capacity, and timelines for meaningful capacity building.

This can be achieved by implementation of a National Progress Plan that will influence the progressive positive obligations placed on mining companies for both local employment and training obligations.

The National Progress Plan should include:

- Available skills at the time that the mining company first engages with the State;
- Specific employment targets that must be met by mining companies in regard to local capacity building;
- A timeline for training locals; and
- A timeline for local hiring for management and other senior level positions.

All of the above should be considered for each labor category (i.e., skilled, semi-skilled, unskilled).

Table 1: Labor Categories, and the Stages for Achieving Local Labor Capacity

Skilled	Semi-Skilled	Unskilled
Academic Training (2-6 years)	2-5 years to get to 100% local employment	100% local employment
Internships/Apprentices (1-2 years)		
Junior Roles		
Middle Management Roles		
Senior Roles		

Table 2: Progressive Employment Obligations

Position	Progression in Years	Percentage of Workforce
Unskilled Labor	Locals must be employed from the inception of the mining project.	100 percent
Academic Study	4-5 years in institutions of higher learning.	0 percent
Junior Roles	1-2 years of apprenticeship or on-the-job training.	Based on in-country assessment
Middle Management Roles	Mining companies must progressively fill these positions over a period of 4-7 years.	Based on in-country assessment
Senior Roles	Mining companies must progressively fill these positions over a period of 8 years and more.	Based on in-country assessment.



Local Goods and Services

“Local goods and services frameworks seek to stimulate the local economy by encouraging or requiring mining titleholders to prioritize purchasing mining goods and services that are produced by the country in which the mining operations will be undertaken, or are produced or provided by locally-owned businesses.”

African Mining Legislation Atlas (AMLA)

7. Local Goods and Services

7.1. Brief Overview

As discussed in paragraph 5 above, the topic of local content is concerned with a preference for supporting local goods, services, labor, and the like. Local goods and services frameworks seek to stimulate the local economy by encouraging or requiring mining titleholders to prioritize purchasing mining goods and services that are produced by the country in which the mining operations will be undertaken, or are produced or provided by locally-owned businesses. The benefits of procuring local goods and services are well documented, and African jurisdictions, in line with exercising their sovereignty over their mineral resources, are refining the local content requirements in their jurisdictions to make the obligations of mining companies more specific and more demanding.

As with employment and training, there are two approaches that are primarily used to give effect to local procurement requirements and obligations. These are:

- The regulatory approach; and
- The incentive-based approach.

Both the incentive-based approach and the regulatory approach involve the State using legislative tools such as proclamations, mining codes, acts of parliament and/or regulations to outline a mining titleholder's obligations in regard to local procurement. These obligations may also be regulated contractually in mining development agreements and community development agreements.

The incentive-based approach offers various incentives (usually fiscal in nature) to mining titleholders to encourage them to procure local goods and services.

7.2. Key Issues for Consideration

The success of local procurement policies largely rests on the definition of the term “local.” Just how local “local” is depends on the dynamics of every country. It may be national, regional, or site-specific to a mining host community. ***It must be understood that local content differs from local procurement.*** These terms are often used interchangeably as though they mean the same thing. However, according to the German Development Co-operation, ***local content differs from local procurement in that goods and services are not only procured from local sources, but also produced locally.*** This key distinction has a major effect on the economic impact that can be gained from local content, over purchasing from resellers or importers of goods. Locally produced goods create more employment opportunities and result in more taxes being raised by the State.⁷¹

Depending on the context, goods, services, or companies may be classified as “local” if one or more of the following characteristics can be demonstrated:

- Local registration: the legal entity is registered under local law. This requires the company in question to have a local presence;
- Local ownership: a certain percentage of the company, usually 50 percent or more, is owned by citizens of the host country, or by existing locally-owned and registered entities;
- Local workforce: the majority of the entity’s workforce are citizens of the host country, whether they are directly employed, or only employed on a fixed-term contractual basis; and
- Local value-addition: a specified percentage of goods or services are produced within the host country. Local value-addition will likely create employment and the opportunity to develop skills.

In practice, host countries often use a combination of the above criteria to determine whether a good, service, or entity may be classified as local. Ultimately, the guiding criteria is often the contribution of the good, service, or company to the stimulation and upliftment of the host country’s

71 See “Local Content Development in Mining Opportunities and Challenges in Kyrgyzstan.” 2016. German Development Corporation, 6 available at http://www.abc.kg/en/analysis/articles/3064_giz_report_on_local_content_development_in_mining

national economy as well as the host country's citizens. Given the considerations raised in this section, in order to maximize the economic benefits that can be derived from local content, "local" should be defined with reference to value addition within the host country.⁷²

· **Capacity Constraints**

In deciding on a local procurement framework, a State must be clear about the ability of its local economy to adequately produce and supply local goods and services. In instances where there are capacity constraints in the host country, a State must be realistic, and make provisions for mining companies to import these goods and services while building capacity locally. In scenarios where certain goods or services that are required are not available locally or within a particular country, local companies must be empowered or encouraged to enter into joint ventures and/or partnerships with foreign companies. For example, Tanzania's *Written Laws (Miscellaneous Amendments) Act of 2017*,⁷³ provides that where goods required by the mining titleholder are not available in Tanzania they must be obtained from a local company that has entered into a joint venture with a foreign company.

In nascent mining industries, States usually introduce local content requirements gradually while building the capacity of local small and medium enterprises (SMEs) through a requirement for mining companies to develop local content plans. In Tanzania, the *Mining (Local Content Regulations) 2018*⁷⁴ provides that when making an application to undertake mining activities, contractors, subcontractors, licensees and other "allied entities" are required to prepare and submit a local content plan for approval by the Mining Commission that must include a long-term plan corresponding with the work program, as well as an annual local content plan.

· **Consultation with local communities and owners of small, medium and micro enterprises in relation to the capacity and ability to provide mining goods and services.**

Consultation is an issue of paramount importance in this regard. In this context consultation allows mining entities to engage with local small, medium and micro-enterprises to determine the mining goods and services that can be provided locally vis-à-vis all of those that will be required by mining entities in the conduct of their mining operations.

72 Supra Note 68, 7.

73 Tanzania's *Written Laws (Miscellaneous Amendments) Act, 2011 (No. 3 of 2011)* available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90405

74 Supra Note 67.

The unfortunate trend in some African jurisdictions is to not have any legislative or contractual consultation obligation. As such, mining entities are often not required to consult with local small, medium and micro-enterprises to determine the goods and services that could be procured from these suppliers.

It is, therefore, important that States consider including a legislative obligation on mining titleholders requiring them to consult with local communities, and with local small, medium and micro-enterprises regarding the mining goods and services that may be supplied by such service providers for the duration of the mining project.

7.3. Recommended Approaches for Deriving Sustainable Benefits for Local Communities

Local content can be promoted through various policy options. The two common policy options have come to be known as “demand-side” and “supply-side.” According to the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, “demand-side relates to policies with a focus on creating a demand for local procurement of good and services. This includes mandatory specified targets to voluntary incentives for achieving targets. Whereas with the latter, the focus is on building the capacity of local suppliers to bring them up to global standards on price, quality and reliability. Both types of policies are typically needed; supplier development helps to ensure that demand-side policies do not require more than local firms are able to supply.”⁷⁵

7.3.1. Demand-Side Policies

Demand-side interventions are rooted in legislative instruments or mineral development agreements. The most common demand-side interventions are namely:⁷⁶

- The imposition of targets or required percentages of particular goods and services that must be purchased locally by mining companies;
- Requirements for mining companies to provide local procurement plans; and
- Lists of goods and services that must be purchased locally.

75 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development: *Local Content Policies In The Mining Sector: Stimulating Direct Local Employment 2018* available at <https://www.iisd.org/system/files/publications/local-content-policies-mining-direct-local-employment.pdf>

76 Ibid.

While demand-side policies are seen as a key driver of local content, in order for such interventions to succeed, consultation with key stakeholders such as mining companies, local companies, and the State are imperative. Some of the challenges associated with these policies include:⁷⁷

- Access to procurement data and understanding of local capabilities by the State;
- Possible contravention of international trade rules;
- Lack of access to finance by local small and medium enterprises; and
- Lack of clear incentives to increase local purchases when there are no tangible links between local purchases and social license to operate (SLO).

In South Africa, the *2018 Mining Charter*,⁷⁸ a policy document, requires that 70 percent of the total spending on mining goods must be purchased from Broad-Based Black Economic Empowerment (BEE) suppliers, and requires that these goods be manufactured in South Africa. This requirement was ill-received by the industry and viewed as unrealistic for the mining of certain minerals, particularly those that require the buying of very large capital equipment from offshore sources that are the sole source of supply of such equipment. This requirement was challenged in court and subsequently set aside.

7.3.2. Supply-Side Policies

As mentioned above, supply-side interventions are concerned with building the capacity of suppliers to provide goods and services competitively.⁷⁹ These interventions include:

- Training and skills development programs for suppliers spearheaded by the State and cofunded by mining companies;
- Funding for supplier programs; and
- The creation of online portals aimed at connecting local suppliers with mining companies.

⁷⁷ Supra Note 76, pg 24.

⁷⁸ *Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018* available at https://www.gov.za/sites/default/files/gcis_document/201809/41934gon1002.pdf

⁷⁹ Supra Note 68, 12.

Supply-side interventions usually require collaboration between mining companies and the State. A case in point is the Anglo-American Zimele enterprise development initiative, which was established in 1989 to provide funding and support to previously disadvantaged South Africans with the goal of creating commercially viable and sustainable small and medium enterprises. To date, this initiative has invested over 708 000 000 South African Rand in small businesses.⁸⁰

In light of the foregoing, it is clear that there is no one-size-fits-all approach to the procurement of local goods and services. The following considerations should inform a country's local content requirements:

- The ability of local companies to supply mining companies, informed by reliable procurement data;
- In nascent mining industries, local content requirements should be phased in gradually over a specific time frame in consultation with key stakeholders;
- The capacity of state institutions to assess compliance with local content requirements. In instances where there are prescribed targets, companies should be required to report regularly on their progress. Where there are no prescribed targets but companies are incentivized to procure local goods and services, such companies must still be required to report regularly on their performance; and
- Enforcement mechanisms that balance the interests of mining companies against those of locals.

Sample, Clauses and Annotations can be found in Part (E) of the AMLA Guiding Template on local and community development in mining projects.

Table 3 is an extract from South Africa's *Mining Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (2018)*, which outlines South Africa's requirements in relation to local procurement and services.

80 <https://southafrica.angloamerican.com/our-difference/zimele>.

Table 3: Inclusive Procurement, Supplier, & Enterprise Development Scorecard

Element	Element description	Compliance target (%)	Measure	Weight (%)
Inclusive Procurement	Total procurement budget spend on goods and services	Procure 70% locally manufactured mining goods with a 60% local content	21% of total mining goods procurement budget must be spent on South African manufactured goods produced by Historically Disadvantaged Persons owned and controlled company	5%
			5% of total mining goods procurement budget must be spent on South African manufactured goods produced by women owned and controlled company or youth owned and controlled company; and	5%
			44% of total mining goods procurement budget must be spent on South African manufactured goods produced by BEE compliant company.	5%
	80% Services		50% of the total services budget must be spent on services supplied by Historically Disadvantaged Persons	5%
			15% of the total services budget must be spent on services supplied by women owned and controlled companies	5%
			5% of the total services budget must be spent on services supplied by the youth owned and controlled companies	5%
			10% of the total services budget must be spent on services supplied by a BEE compliant company.	5%
	Research & Development		A minimum of 70% of total research and development budget to be on South African based research and development entities.	2.5%
	Sample Analysis		Utilise South African based facilities or companies for the analysis of 100% of all minerals samples across the mining value chain.	2.5%

Source: South Africa's Mining Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (2018)

Toolbox Item 4

African States must adopt procurement policies and laws that progressively ensure that local industries are either developed or expanded. The benefits of doing this in terms of State revenue, local employment, and economic links are immense.



Infrastructure

“Infrastructure provisions aim to ensure that both the country and the surrounding community benefit from the infrastructure investments made by the mining company to the greatest extent possible, and that local development of the host country’s infrastructure is also promoted.”

African Mining Legislation Atlas (AMLA)

8. Infrastructure

8.1. Brief Overview

Mining activities require a supporting infrastructure, which varies depending on the needs of each particular mining operation. Such infrastructure includes housing for mine employees, waterways, pipelines, roads, ports, airports, power lines, telephone lines, and/or internet cables. Additional infrastructure that is designed especially for communities under a CDA or CDP may be included as well.

Infrastructure provisions address issues of construction, ownership, control, and use of infrastructure. Infrastructure provisions aim to ensure that both the country and the surrounding community benefit from the infrastructure investments made by the mining company to the greatest extent possible, and that local development of the host country's infrastructure is also promoted. This area requires joint planning and coordination between the State and mining companies. There are various models or approaches for deriving sustainable benefits for local communities through infrastructure projects. These approaches are often informed by a country's general approach to development. Infrastructure can be owned by the State; privately owned; jointly owned in the form of a public/private partnership (PPP); or partly owned by the State and partly owned by the mining company.

8.2. Key Issues for Consideration

8.2.1. Institutional Capacity Constraints and Infrastructure Weaknesses

Where the capacity of state structures and service delivery mechanisms are constrained, especially at the local level, approaches that require minimal daily management or control by the State are preferable. Cohesive existing infrastructural capacity, including a national electricity grid, access to electricity, telephone lines, and water pipelines may be lacking at the national or local level.

8.2.2. Avoidance of “Enclave Infrastructure”

“Enclave infrastructure” is infrastructure that is tailored to the mining project’s needs and interests only. Such an approach will not create sustainable benefits for local communities. A needs assessment and consultation with the surrounding affected persons and local State authorities should be undertaken to guard against “enclave infrastructure,” and to ensure that the infrastructure benefits local communities beyond the life of the mine. There may be occasions where infrastructure must be developed on a site-specific basis. Even in those circumstances, there should be opportunities for local communities to benefit from infrastructure developments.

8.2.3. Access to Third Parties and Use Rights

The system of property rights in a particular jurisdiction will affect the approach chosen to provide access to third parties and use rights in regard to infrastructure. A jurisdiction that entrenches private-party rights may be required to grant servitudes, use rights, or other titles to individuals, communities, or organizations. Jurisdictions that emphasize communal or state ownership may not need to grant any use rights if the public owns and/or has rights or interests in the infrastructure, while recognizing that in certain jurisdictions some uses are given priority over other uses.

8.3. Recommended Approaches for Deriving or Creating Sustainable Benefits for Local Communities

8.3.1. State-Owned

There are two main approaches to a state-owned model. The first is where the State directly undertakes infrastructure projects, or does so through an intermediary/contractor by way of a competitive procurement process. This approach has been adopted in Guinea.⁸¹ The second approach is where the State builds the infrastructure and compensation is paid by the mining company to the State for use rights and access. This approach has been adopted in Benin.

The state-owned approach may be desirable to mining companies when the State has the capacity/credibility to fund and manage delivery of the infrastructure project(s); to pay compensation in the case of infrastructure project delays; to ensure reliable infrastructure operation; and to guarantee competitive and stable access tariffs.⁸² In some jurisdictions, the State has the power to expropriate land, which is especially important where infrastructure requires a linear right of way or use. (This is discussed in Part D of the AMLA Guiding Template.) In instances when the State does not have the aforementioned capacity, other infrastructural ownership models are preferred and are more appropriate, as discussed at paragraph 8.3.3, 8.3.4 and 8.3.5.

The consequences for implementation of this approach include the fact that the success of the infrastructural projects depends entirely on the State's ability to execute them, including its capacity to implement a competitive procurement process. Additionally, the State is in control of the infrastructure, and when mining is completed it can decide what to do with it.

8.3.2. Public Private Partnership

A public-private partnership (PPP) is a long-term contractual arrangement between a State and a private entity for providing public good and services. In a typical PPP arrangement, the risks associated with the financing, design, construction, operation, management, maintenance, and ownership of infrastructure are jointly shared between the State and the private entity.

PPPs are one of the approaches that may be used to deliver infrastructure in the context of mining projects. The key pillars of a sound PPP include, but are not limited to:⁸³

81 Article 121 of Guinea's *Mining Code of the Republic of Guinea 2011*, as amended by the legislation amending the Act L/2011/006/CNT of 09 September 2011 available at <https://a-mla.org/en/country/Guinea>

82 P Collier and G Ireland. 2018. "Shared-Use Mining Infrastructure: Why It Matters and How To Achieve It." *Development Policy Review*. Vol.36(1), pp.51–68

83 U. Essia and A. Yusuf. 2013. "Public-Private-Partnership and Sustainable Development of Infrastructure in Nigeria." *Journal for Advances in Management and Applied Economics*. vol. 3, no.6, 2013, 113-127

- **Demand-Driven:** Successful PPPs in the mining industry focus on the demands and pressing market needs of the sector; the relevant local mining industry; and the community in which such PPPs operate;
- **Financial Independence:** PPPs work best where there is a revenue-generating stream that allows fiscal allocation from the State to enhance the PPP agency's capacity to operate in highly competitive environments and strive towards innovation and efficiency;
- **Core Structural Integrity:** A sound PPP establishes a track record of trust, timeliness, reciprocity, and resourcefulness, all of which are essential components of a successful long-term PPP initiative/project; and
- **Balance:** A PPP should be based on an appropriate balance of project risk and financial benefits between the parties. A PPP has the additional benefit of spreading the risk of development between the investor parties, and prevents that risk from being spread to local communities.

8.3.3. Privately-Owned

In this model, the mining company owns the infrastructure that it builds, and in some jurisdictions, use rights are granted to the State/third parties.⁸⁴ (In some instances, these rights are subject to compensation and nonobstruction of the mining titleholder's rights.)⁸⁵ Depending on the location of the mine, there may be circumstances where, if the mining company refuses the community's use of its infrastructure, the aggrieved person or community may approach the regulator to intervene. This model is frequently used in vertically integrated mining operations. It is generally employed when the mining company determines that a suitable logistics infrastructure is not available, and the State is unable or unwilling to provide and/or operate it on terms that are acceptable to the company. These circumstances frequently arise when a mineral deposit is found in a remote, undeveloped region of a developing country that lacks the financial and/or technical capacity to deliver or operate a major infrastructure project.⁸⁶

This model arises from the privatization of public infrastructure facilities through an initial public offering; or the sale of an entity created to hold public infrastructure assets; or a

84 In Liberia, the State has use rights in respect of the mining company's infrastructure.

85 Article 131 of Cameroon's *Mining Code, Law No. 2016/017 of December 14, 2016* available at <https://a-mla.org/en/country/law/867>

86 Supra Note 82, pp 51-68

long-term right to operate and manage them. It also occasionally arises in the context of a greenfield mining project where the mining company and/or State decides that responsibility for the infrastructure facilities, including their funding, construction, and/or operation, will be assigned to the mining company or to a third party.⁸⁷

Responsibility for the upkeep and maintenance of the installations is the responsibility of the mining company. They may, where appropriate, be declared a public utility in accordance with the laws and regulations in force.

Upon termination of mining operations, in some jurisdictions (such as Guinea), infrastructure is transferred to the State free of charge after a period that is necessary for a return on the infrastructure investment to be made.⁸⁸ A similar clause is contained in Angolan contracts, in regard to the transfer and abandonment of assets either upon termination of the contract, or the date of abandonment and decommissioning in any part of the contract area⁸⁹. In such circumstances, with the relinquishment of the infrastructure, typically the mining company's liability is also relinquished, except in cases of gross negligence or willful misconduct.

Some jurisdictions require the removal of infrastructure upon mine closure, as part of the obligation to rehabilitate (for example, Article 136(2) of the *Cameroon Mining Code*).⁹⁰ South Africa's *Mineral and Petroleum Resources Development Act 28 of 2002* provides that upon the abandonment, cancellation, or lapsing of a right or license, the holder is prohibited from demolishing or removing any building structure or object that has been identified in writing by the regulator.⁹¹

Private ownership of infrastructure models are traditionally used in jurisdictions where States have laissez faire approaches. Private ownership of infrastructure has traditionally been viewed as encouraging investment and promoting investor confidence.

If the mine is required to build its own infrastructure, it is less likely to build infrastructure of a size or capacity that will benefit local communities without an incentive to do so. Furthermore, the high costs of building infrastructure could affect the viability of the infrastructure project.

87 Ibid.

88 Article 121 of Guinea's *Mining Code 2011*.

89 See Article 28(1) of Angola's *Mining Code, 2011*.

90 See Cameroon as an example of this practice. Cameroon's *Mining Code*.

91 Section 44 of South Africa's *Mineral and Petroleum Resources Development Act 28 of 2002*.

8.3.4. Other Models

According to Section 12.2 of Liberia’s *Minerals and Mining Law (2000)*,⁹² fixed assets installed by the mining titleholder become the property of the State, and movables remain the property of the titleholder. An option in favor of the State to purchase the movable assets exists.

In Cameroon’s *Mining Code*, a Separate Mineral Terminal Agreement and Railway Haulage Agreement (separate from the Concession Agreement) that deals with ownership of facilities and infrastructure can be concluded. This is also the case with third-party access facilities.

Table 4 provides an illustration of how each of these models operate in the power sector:

Table 4: Potential Outcomes of Each Model of Power Infrastructure

State-Owned Model	Privately-Owned Model	PPP Model
In this example, the mining company would rely on the national power utility for a constant and reliable power source.	The mining company would own and generate power for its own consumption. Where the mining company has excess capacity, it may sell the excess power that is generated to the State.	PPPs where the mining company and the State jointly share risks related to financing, design, construction, operation, management, maintenance, and ownership of power plants for the benefit of the community, and mining company.

⁹² Liberia’s *Mineral and Mining Law, 2000* available at <https://a-mla.org/en/country/law/48>

Toolbox Item 5

The role of the State in developing and managing public infrastructure should not be eroded by imposing positive obligations on mining companies. However, mining companies have capacity, and can help States develop and manage infrastructure for the benefit of both the public and the mining company; therefore mining companies and the State must seek practical collaboration to ensure mutual benefit.



Vehicles and Modalities for Implementing Compulsory Local Development

“local development projects and initiatives must be assured of being resilient, sustainable, and robust in the case of a failing mining project; and they must transcend the unpredictable nature of mining operations.”

African Mining Legislation Atlas (AMLA)

9. Vehicles and Modalities for Implementing Compulsory Local Development

This section of the toolkit addresses four practical ways of engaging the community in implementing local development. The vehicles discussed include community development agreements (CDAs), community development plans (CDPs), community development funds (CDFs), and community development trusts (CDTs).

9.1. Community Development Agreements

CDAs are frequently used by mining companies to better define their relations with and obligations to the communities and relevant stakeholders that are impacted by their mining operations.

The importance of using legally binding formal instruments to document and confirm the results of the consultation is critical. Formalized instruments such as CDAs have the advantage of being clearer, more transparent, and more enforceable than general legislative provisions.⁹³ Many jurisdictions use a CDA to capture the commitments or legal obligations of a mining company in relation to the community, and with respect to local development.

93 S Bass, PS Parikh, R Czebiniak, M Filbey *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities* Environmental Law Institute (2003), 37.

Best practice dictate that a CDA must be informed by:

- Undertaking a social and economic background assessment of the area in which the mine operates, which includes input from local communities;
- Considering the key economic activities of the area in which the mine operates; and
- Undertaking a social impact assessment of the mining operations within the area.

These studies are often undertaken by the mining titleholder, but are subject to the State's approval. When investigating the findings of the assessments conducted, regulators ought to adopt a rigorous approach as opposed to a tick-boxing exercise; and where possible, and if necessary, they should undertake their own independent assessments.

9.1.1. When should CDAs be concluded or drafted?

CDAs are generally concluded subsequent to the grant or issuance of a mining title. Although the conclusion of a CDA is not an express condition for the grant or issuance of the title, the mining titleholder is usually required by a statutory provision to conclude and implement a CDA, and contravention of same carries with it legal consequences.⁹⁴ Some jurisdictions specify that the CDA must be concluded prior to the commencement of any development activity within the mining area.⁹⁵ Based on the argument *for an imposition of positive local development obligations, the better practice is to require CDAs to be concluded prior to the granting of a mining title.*

9.2. Terms to be Included in a CDA

CDAs outline the programs, approaches, and financing that will be needed to facilitate efficient and transparent engagement between the titleholder and the community.

94 Sierre Leone's *Mines and Minerals Act 12 of 2009* is a case in point.

95 Section 116 of Nigeria's *Nigerian Minerals and Mining Act, 2007*.

They include the building of infrastructure for the community's benefit, including roads, hospitals or clinics, and education facilities, depending on the community's needs. Any construction occurring in this context must be held to the same standards of construction that apply to the infrastructure that is being built specific to the mining operation.

The mining law and its regulations should provide clear guidance for the negotiation and development of CDAs.⁹⁶ CDAs should therefore require rather than encourage consultation with local communities for setting priorities for community development projects. Furthermore, the development projects in a CDA must to be aligned with the State's relevant local development plans.

It is also important that CDAs provide for annual reporting obligations on implementation requirements, as well as annual meetings.

Guinea requires a CDA to be concluded with the local community residing on or in the immediate vicinity of the exploitation title or mining concession.⁹⁷ Contribution is based on turnover and a local development fund is to be funded from the first year of operation. The terms of use of the contribution and the operating management rules of the local development fund are defined by a decree of the president.

Financial provision for the implementation of the CDA must be included. Dispute resolution mechanisms in cases where community engagement does not reach a positive outcome must be built into the CDA. The regulator must also be involved in the conclusion of the CDA (as is done in Sierra Leone). This includes instances where agreement cannot be reached prior to the commencement of mining operations and must be referred to the regulator, in consultation with the local authority.

96 Otto, James M.. 2010. *Community Development Agreement : Model Regulations and Example Guidelines*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/27729>

97 Article 130 of Guinea's *Mining Code 2011*.

Case Study #6

Equatorial Guinea: Mediation or Expropriation

In Equatorial Guinea, if a mining company and landowner cannot reach agreement related to the property's acquisition, then the matter is referred to the Ministry of Mines , which will act as mediator between the parties. If mediation fails to produce a resolution, the matter is referred to the courts, unless the expropriation route is followed.

Appendix D provides a template for a CDA. This template is designed to help States formulate and prepare a national CDA template, taking into account local laws and issues.

9.3. Community Development Plans (CDPs)

Some countries prefer to use a CDP. The nomenclature used for CDPs varies from country to country. Ideally, CDPs should be included in the jurisdictional requirements for the grant of a mining title, and be approved prior to issuing it. The contents of the CDP are often not contained in primary statutes, but are sometimes contained in subsidiary legislation or regulations.

Much of what has said about CDAs applies to CDPs as well. A proposed template of the CDP is attached as Appendix D.

9.4. Community Development Funds (CDFs)

9.4.1. Existing Approaches

A CDF is one of the vehicles available for implementing mining companies' community development obligations and projects. A number of jurisdictions on the continent use various types of CDFs, including trusts, companies, third-party security arrangements, special accounts, and more. CDFs are funded by a portion of the proceeds from mining revenues or profits, proceeds from royalties, taxes, state funds (used where the State has a direct stake in mining operations); or an upfront payment may be made by the mining company into the CDF. The issue with the latter approach is that mining titleholders may not have the funds available upfront to deposit into the designated account. Responsibility for management of the CDF will depend on the type of vehicle chosen, but often lies with a body that is close to

the beneficiaries of the funds such as ministries and executive agencies dealing with local government, decentralization and rural development. Some CDFs require States to be an active player in the oversight and management of the CDF. While it is important for States to have an oversight role to ensure that the funds are being disbursed for their contemplated objectives, it is difficult for them to be involved in the day-to-day management of CDFs.

The following case studies show various approaches taken by States in regard to the use of CDFs:

Case Study #7

CDFs in Chad

Chad has established a Mining Sector Development Fund for the benefit of Chad's National Mining Company.⁹⁸

According to Article 314, a mining company's obligations to the Mining Sector Development Fund are fixed by decree taken in the Council of Ministers.

“314: Le fonds de développement du secteur minier est créé sous la forme d'un compte d'affectation spéciale au profit de la société nationale de mines. Les modalités et le pourcentage sont arrêtés par décret pris en conseil de Ministre.”

Additionally, according to Article 315, mining titleholders must pay 5 percent of their mining revenues into the Local Development Support Fund of the Decentralized Territorial Communities in whose territory the mining sites are located, in order to contribute to the socioeconomic development of the decentralized territorial communities in the areas where the mining titleholder is operating.

“315: Five percent (5%) of revenues from mining activities are allocated to the Decentralized Territorial Communities on whose territory the mining sites are located.”

The terms of supply, operation, and functioning are fixed by decree upon the proposal of the minister in charge of mines.

98 See *Mining Code 2018*, Chapter 2, Section 2, Articles 312, 314, and 315; accessible via the AMLA Platform at <https://a-mla.org/en/country/law/1239>

Case Study #8

CDFs in Ethiopia

Ethiopia's Mining Operations Proclamation No. 678/2010, and the Directive to Regulate the Allocation of Community Development Funds Collected from Exploration and Mining Operation No. 01/2019 (Community Development Directive) deal with mining community development requirements in Ethiopia. The law requires that CDFs be set aside to be used for community projects. Article 60(3) of the Mining Operations Proclamation provides that:

“To be determined by the license area and by agreement, mineral licensee and, as appropriate, exploration licensee shall participate in the community development plan of the people within the license area, and shall allocate money for such expenses.”

In respect of the funding related to CDFs, Article 4 of the Community Development Directive requires that:

“(1) any mining license holder, shall, in accordance with article 62 of the Proclamation and Article 41 of the Regulation, deposit the community development fund in the account opened by the regional bureau/secretariat office particularly for this purpose, if the license is granted by region and in the account of the Ministry opened particularly for this purpose, if the license is granted by the Ministry and submit an evidence showing the same to the licensing authority.”

Depositing the CDFs into a state account is one way, but not the only way, for the State to secure the funds for community development. Furthermore, the Community Development Directive does not expressly require that the funds be deposited into an interest-bearing account, and even in such instance, how that interest is to be treated. It is advisable for all interest accrued to be regulated clearly to ensure the proper administration of the funds.

Article 4(2) of the Community Development Directive requires a licensee who is in the preparation phase of the mining operation to pay fifty percent (50%) of the funds committed to in the community development fund within twelve months from the signing of the mining agreement and the remaining 50% “on the first month of the last preparation period.”

Further, Article 5 of the Community Development Directive provides that the ministry has the duty to ensure that mining titleholders make timely payments into the CDF; notify the beneficiary community's ministry region, zone, or woreda once they have done so within 15 days from the date of deposit of the funds into the CDF; and release 50 percent of the funds to the regional mining bureau within 15 days of the submission of the request, to facilitate the commencement of the project work as planned.

Article 6 of the Community Development Directive makes provision for the establishment of a committee comprised of relevant stakeholders, namely the community, the State, and the licensee; and this committee is

responsible for the proper administration of the funds.

The Community Development Directive seeks to establish a mechanism for the protection of funds for community development, as well as to put into place systems of the effective administration of the accounts, while ensuring that the administrators are accountable to the beneficiaries. This may include addressing the interest accrued from funds deposited into the account.

9.4.2. A New Approach to CDFs

Mining is an unpredictable dynamic activity that is affected by social and economic conditions. There are unfortunately many examples of mines that have been required to close prematurely, contrary to what was planned when the mining titles were granted. Funds for local development obligations and projects are often cut as soon as mining companies run into financial difficulties. Therefore, local development projects and initiatives must be assured of being resilient, sustainable, and robust in the case of a failing mining project; and they must transcend the unpredictable nature of mining operations. Financial independence from mining operations is one way to achieve this.

An improved approach to CDFs should be to require mining companies to make upfront financial provision for local development commitments at the outset of a mining project, or as a condition of the granting or issuance of a mining title, akin to the required financial provision for environmental liabilities. The need to make financial provision for environmental liabilities at the outset of mining operations has become an accepted international best practice. The benefit of this approach is that funds are immediately ring-fenced for local development commitments at the outset of a particular project, before a shovel goes into the ground; these commitments are therefore not dependent on the profitability of the mining project. The requirements for financial provision and the vehicles for financial provision are often contained in regulations. The question is, where will such funding be sourced?

The rise of environmental and social governance (ESG) considerations and responsible investing is being accompanied by a rise in sustainable financial practices and instruments. “Sustainable finance” means “financial models, services, products, markets and ethical practices to deliver resilience and long-term value in each of the economic, environmental and social aspects and thereby contributing to the sustainable development goals and climate resilience.”⁹⁹ In other words, sustainable finance requires development that is focused on the long term and on material ESG factors. Mobilizing capital for a sustainable economy will require shifting the current capital allocation from an unsustainable pathway to a sustainable one, and filling the investment gap to ensure that sustainable finance objectives are achieved on time. The suggested scope of sustainable finance is broad and inclusive, and is applicable to all types of financial transactions, products, and services, at all stages of decision making, and during the period of investment.

Sustainable finance uses a variety of instruments, including equity and debt. Most stock exchanges now provide for social, “green,” or sustainability bonds (sustainability bonds being a combination of social bonds and green bonds), which are issued to borrowers to gain access to capital, and which are used to fund environmentally and socially responsible operation, investment, or project initiatives. To qualify, bonds must meet certain criteria, which are set according to a defined standard. Although there are still issues with respect to the standardization of project beneficiaries, more taxonomies and metrics are being developed to better define sustainable projects.

Many local development projects would qualify for sustainable finance. This means that new avenues are available to mining companies for funding local community development projects.

9.5. Community Development Trust Deeds (CDTs)

Another vehicle used for local development and local content is the CDT. This vehicle raises many of the issues discussed above in relation to CDAs, CDPs, and CDFs. In addition, and given its juristic nature, the CDT raises two additional perennial issues.

In the first instance, the governance of a CDT can be a contentious issue in diverse communities and/or in communities with unscrupulous leaders. The CDT deed must, therefore, be drafted very carefully in order to avoid this possibility. Secondly, the identification of “community,” and “beneficiaries” is a complex issue, the details which have been discussed at length in this toolkit.

99 ENS Africa, August 2020, *Sustainable Finance And The South African Financial Services Sector*, available at <https://www.lexology.com/library/detail.aspx?g=5fea939c-2b13-4dce-ae77-ec5d2af0b99c>

Each jurisdiction has laws governing the establishment and the administration of trusts. Therefore, the local requirements of each jurisdiction must be met when establishing a trust. These requirements address some of these questions: Who can legally establish a trust? For what purposes may a trust be formed? Who may serve as trustees? How is a trust dissolved? Questions about the control, management, and governance of trusts, and the winding up or termination of trusts are also important to address.

Appendix C provides a model template CDT deed. This deed is not jurisdiction-specific. It is capable of adapting to the local nuances of any jurisdiction.

Toolbox Item 6

The community development obligations of mining companies must be legislated. In addition, practical tools and instruments to ensure practical development-based programs can be undertaken by mining companies in fulfilling their local development obligations.

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Appendix A: The Toolkit

Toolkit Item 1: In modern mineral regulation, the role of the mining company has evolved to include duties to help develop the community and work with States in the provision of infrastructure and services.

Toolkit Item 2: The modern African State must develop adequate laws to ensure that mining companies consult and engage with communities meaningfully regarding all aspects and stages of mining projects; and that they provide them with sufficient information, to ensure that the communities appreciate and understand both the positive and negative impacts of mining.

Toolkit Item 3: African States must ensure that their local content laws and tools help to promote the skills development and career progression of the local population, and that they build capacity in both their operations and the operations of their contractors. States can achieve this by specifying local employment requirements in laws, mining titles, and agreements.

Toolkit Item 4: African States must adopt procurement policies and laws that progressively ensure that local industries are either developed or expanded. The benefits of doing this in terms of State revenue, local employment, and economic links are immense.

Toolkit Item 5: The role of the State in developing and managing public infrastructure should not be eroded by imposing positive obligations on mining companies. However, mining companies have capacity, and can help States develop and manage infrastructure for the benefit of both the public and the mining company; therefore mining companies and the State must seek practical collaboration to ensure mutual benefit.

Toolkit Item 6: The community development obligations of mining companies must be legislated. In addition, practical tools and instruments to ensure practical development-based programs can be undertaken by mining companies in fulfilling their local development obligations.

African Mining Legislation Atlas (AMLA)

Appendix B: Summary of Mining Laws in 54 African Countries

Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used
1.	People's Democratic Republic of Algeria	No	Unknown	Mining companies are required to contribute to a local authority fund. Article 142 (Algeria Mining Law 2014) requires a share of the proceeds from the royalty to be paid into a common fund of local authorities for the benefit of municipalities.	Rates determined by regulation.
2.	Republic of Angola	Yes	N/A	Angola's Mining Code requires a mining titleholder to develop and report on the progress of a social development plan.	The contents of the social development plan are not prescribed by legislation. However, the social development plan must be developed in consultation with the affected mine community and the regulatory authority.
3.	Republic of Benin	Unknown	Unknown	Unknown	Unknown
4.	Republic of Botswana	No	Mining companies participate in community development through their corporate social investment programs.	N/A	The terms of the corporate social investment programs are not prescribed by law and must be developed in consultation with the affected mine community and the regulatory authority.
5.	Burkina Faso	Yes	N/A	Burkina Faso employs the use of Social Management Plans.	Social Management Plans must be compiled in consultation with the minister responsible for mines as well as the host community.
6.	Republic of Burundi	No	Unknown	N/A	Unknown
7.	Republic of Cabo Verde	No	Cabo Verde uses concession agreements and houses community development obligations therein.	N/A	The terms of community development obligations are freely negotiable between the parties, in consultation with the relevant mine community.
8.	Republic of Cameroon	Yes	N/A	The Mining Code prescribes in Article 164 that the standard mining agreement must include a section dealing with local content.	The contents of the local content section are prescribed in Article 165(2) of the Mining Code.

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Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
9.	Central African Republic	Yes	N/A	Legal obligation for the mining titleholder to conclude a CDP.	Unknown
10.	Republic of Chad	Yes	Unknown	Legal obligation for mining titleholder to pay 5% of mining revenues from the producing area into a local development support fund intended to contribute to the socioeconomic development of local authorities located in the areas where mining companies operate.	The terms of supply, operation and functioning are fixed by decree on the proposal of the minister in charge of mines.
11.	Union of the Comoros				
12.	Democratic Republic of Congo	Yes	N/A	Article 285 of the Mining Code requires holders of a mining title to contribute toward projects to promote socioeconomic and industrial development within affected communities. The specific contributions and support will be included in a set of specifications (cahier de charges).	Unclear - Mining Regulations outline rules relating to negotiations as well as practical modalities for establishment, filing, admissibility, examination and approval of specifications.
13.	Republic of the Congo				
14.	Republic of Côte d'Ivoire	Yes	N/A	Article 28 of Ivory Coast's Mining Code requires the submission of a community development plan as part of an application for a mining license.	The terms of the community development plans are freely negotiable. However, such plans must be compiled in consultation with the affected mine community as well as the mining regulatory authority.
15.	Republic of Djibouti	Unknown	Unknown	Unknown	Unknown
16.	Arab Republic of Egypt	Unknown	Unknown	Unknown	Unknown

Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
17.	Republic of Equatorial Guinea	No	Equatorial Guinea uses its standard concession agreements to create community development obligations. Article 23 of Equatorial Guinea's standard concession agreement requires the mining entity to spend a specified (negotiable) amount of money on social programs for the duration of the contract.	N/A	The general provisions of the concession agreements are prescribed by a pro-forma template. However, the specific amount that is to be contributed by the holder of a concession may be freely negotiated between the State and the holder of the concession.
18.	State of Eritrea	No	Unknown – Model Mining Agreement imposes a general obligation on mining company to promote the general welfare and enhance the quality of life of the inhabitants living in the host and neighboring communities.	N/A	Unknown
19.	Kingdom of Eswatini	Unknown	Unknown	Unknown	Unknown
20.	Federal Democratic Republic of Ethiopia	Yes	N/A	Article 60(3) of the Mining Operations Proclamation contemplates that holders of mining licenses shall participate in a community development plan of the peoples within the license area, and shall allocate money toward a community development fund.	The contents of the community development plan and the participation of licensees is not regulated in terms of law and parties are free to negotiate the terms thereof.
21.	Gabonese Republic	Yes	N/A	Article 157 of Gabon's mining code requires that mining titleholders must conclude a mining agreement with the State. Such agreement must provide for, among other things, obligations relating to corporate social responsibility, in particular the policy for the development of riparian areas and, by extension, the communities that live therein.	The terms of the corporate social responsibility obligations may be negotiated between the mining titleholder and the regulatory authority. No obligation exists to consult with the affected mine community, although this would be a beneficial practice for practical purposes.
22.	Republic of the Gambia	Unknown	Unknown	Unknown	Unknown

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Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
23.	Republic of Ghana	No. However, a Mineral Development Fund has been established pursuant to Minerals Development Fund Act, 2016 to: - redress the harmful effects of mining on affected communities and persons; and to - enable local economic development projects and alternative livelihood projects in communities affected by mining activities.	Private-sector-led voluntary CDAs e.g. Ahafo Project (Newmont Mining)	N/A	The terms of the CDAs are freely negotiable between the parties.
24.	Republic of Guinea	Yes	N/A	Guinea uses CDAs & contributions to the Local Development Fund in order to provide for the community development obligations of mining entities.	The methods for drawing up the CDA are defined by joint order of the ministers in charge of mines, as are the terms of use, rules of operation, and management of the Local Development Fund. Consultation is a central principle of the CDA.
25.	Republic of Guinea-Bissau	No	Unknown	N/A	Unknown
26.	Republic of Kenya	Yes	N/A	Article 109 of the Mining Act, 2016, requires a mining license holder to sign a community development agreement with the community where mining operations are to be carried out.	Contents of the CDA and the requirements to consult are prescribed by the CDA Regulations.
27.	Kingdom of Lesotho	No	Various community development projects undertaken through mining companies' corporate social responsibility projects.	N/A	The terms of the corporate social responsibility projects are not prescribed by law and are, therefore, negotiable. However, the affected mine community are usually consulted.
28.	Republic of Liberia	No	Mining entities are under the legal obligation to contribute to the Mineral Development Fund.	N/A	Minister of Mines administers the funds. Funds are used for community development and infrastructure development.
29.	Libya	No	Libya does not legislatively impose the obligation to conclude CDAs, nor does such an obligation exist in Libya's standard concession agreements.	N/A	Unknown
30.	Republic of Madagascar	Unknown	Unknown	Unknown	Unknown

Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
31.	Republic of Malawi	Yes	N/A	Section 300 of Mines and Minerals Act, 2018 prescribes that a mining titleholder develop a community engagement plan in collaboration with local authorities.	Contents are prescribed by the Mines and Minerals Act but there is no closed list.
32.	Republic of Mali	No	CDAs are not legislatively required to be concluded, nor do any social responsibility obligations arise from Mauritania's concession agreements.	N/A	Unknown
33.	Islamic Republic of Mauritania	No	CDAs are not legislatively required to be concluded, nor do any social responsibility obligations arise from Mauritania's concession agreements.	N/A	Unknown
34.	Republic of Mauritius	Unknown	Unknown	Unknown	Unknown
35.	Kingdom of Morocco	Unknown	Unknown	Unknown	Unknown
36.	Republic of Mozambique	Yes	N/A	Article 36 of Mozambique's Mining Code obliges the holder of a mining license to carry out social, economic, and sustainable development actions in the mining concession areas.	No formal terms are prescribed, as such, but mining entities are required to consult with local communities and the regulatory authority when carrying out any social, economic, and sustainable development actions.
37.	Republic of Namibia	None. But there is an obligation to compensate landowner for access to land.	Unknown	Legal obligation to pay compensation.	Unknown
38.	Republic of Niger	No	In practice, the holder of a mineral license concludes a mining agreement with the State. The Mining Agreement then imposes community development obligations on the holder of the mineral license.	N/A	Niger uses a pro forma template for its mining agreements. However, the parties are free to negotiate the terms of the agreement that relate to the development of the host community. No obligation exists in law to consult with the affected community prior to the conclusion of the mining agreement between the State and the mining entity.
39.	Federal Republic of Nigeria	Yes	N/A	Section 116(1) of the Nigerian Minerals and Mining Act, 2007 prescribes that a mining titleholder conclude a CDA with the host community.	Contents are prescribed in section 116(3) of the Act.

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Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
40.	Republic of Rwanda	No	Mining entities are obliged to compile a plan for development and social welfare.	N/A	The contents of the plan for development and social welfare must be compiled in collaboration with the authorities of the district where the mining or quarry operations are carried out.
41.	Democratic Republic of São Tomé and Príncipe.	Unknown	Unknown	Unknown	Unknown
42.	Republic of Senegal	Yes	N/A	Support and Equalisation Fund for local communities. Local development plan. Compensation must be paid by mineral titleholder to the State or any natural or legal person for material damages and losses that he has caused. Funded by part of tax resources (20% of revenues from mining operations). Legal obligation to establish local development plan.	Terms, operation, functioning, and conditions of payment / funds are set by a decree. Local development plan must be consistent with existing national local development plans and in consultation with the populations and administrative and local authorities. The local development plan must integrate women's empowerment projects. Annual amount of financial commitments is 0.5% of the turnover, excluding annual tax. Terms and conditions for supplying and using resources of the fund are specified in the agreements and protocols concluded between the State and holders of mining titles.
43.	Republic of Seychelles	No	In practice, CDAs are not concluded. However, the owner of the land has the statutorily enshrined right to compensation in the event that mining operations disturb his/ her land. The landowner also has a statutorily enshrined right of partial payment of royalties according to section 8 of the Seychelles' Mining Code.	N/A	Parties are free to negotiate the terms that govern their relationship, so long as such terms are not incompatible with legislative provisions.
44.	Republic of Sierra Leone	Yes	N/A	Sierra Leone imposes community development obligations using a CDA.	A CDA must be negotiated with the primary host community and the contents are prescribed in legislation. Percentage of gross revenue must be used to implement the CDA.

Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
45.	Federal Republic of Somalia	No	In practice, CDAs are not concluded. However, the landowner has the statutorily enshrined right to compensation in the event that mining operations disturb his/her surface rights.	N/A	Parties may freely negotiate the terms governing their relationship.
46.	Republic of South Africa	No	Lease agreements or relocation / compensation agreements with affected communities.	Social Labour Plans (SLPs). SLPs are used to regulate the development of host communities.	SLPs follow prescribed regulations. In formulating the plan, the titleholder must consult with the host community, but does not need to negotiate.
47.	Republic of South Sudan	No	CDAs are not concluded. However, South Sudan's Mining Code provides that a mineral license holder is required to compensate Users of Land for damage to land and property resulting from mining operations.	N/A	Parties may freely negotiate the terms governing their relationship.
48.	Republic of the Sudan	Unknown	Unknown	Unknown	Unknown
49.	United Republic of Tanzania	Unknown	Unknown	Unknown	Unknown
50.	Togolese Republic	No	Togo's mining legislation requires the compensation of the landowner in the instance that mining activities cause damage or degradation to the land.	N/A	Parties may freely negotiate the terms governing their relationship.
51.	Republic of Tunisia	No	Tunisia does not legislatively impose community development obligations on mineral titleholders. However, such obligations are contractually imposed in Tunisia's standard concession agreements.	N/A	Mining entities may negotiate the terms of their community development obligations in consultation with the affected mine community and the ministry in charge of mines.
52.	Republic of Uganda	No	Written consent is required in respect of land which is held communally for cultural rites from the community concerned. Where consent is granted, an agreement is usually concluded.	Legal restriction on the exercise of mineral rights.	Consent must be given subject to such conditions as are specified in the instrument of consent.

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Item No.	Country	Requirement in Legislation to Conclude a CDA/CDP/ Other	Best Practice (if no legislative requirement exists)	Regulation of CDAs/CDPs/Other (if a legislative requirement exists)	Freely Negotiable Terms/Pro Forma Template Used)
53.	Republic of Zambia	No	Undertaking the promotion of local business development is a condition to obtain a mining license. Compensation required for disturbance of surface use rights. Strict liability for any negative impact on the livelihood or Indigenous knowledge systems or technologies of any community, disruption to production or agricultural system, reduction in yields of local community, damage to the economy of an area or community. Voluntary CSER programs.	Undertaking is a legal mechanism but voluntary programmes for community development are prominent as part of Corporate, Social, and Environmental Responsibility (CSER) / social responsibility.	Consultation with persons affected by mining operations is required.
54.	Republic of Zimbabwe	No	Unknown	N/A	Unknown

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Appendix C: Deed of Trust

Draft for Consultation

constituting

THE [▼] COMMUNITY DEVELOPMENT TRUST

entered into between

[▼]

(a company incorporated under the laws of [▼] under Registration No. [▼])

(in its capacity as the “Mining Title Holder”)

and

[Insert Trustee Name]

(Identity No. [▼])

and

[Insert Trustee Name]

(Identity No. [▼]) (in their capacity as the “Trustees”)

[General Drafting Note: This Community Trust Deed is a guideline based on comparative regulatory frameworks and best international practices. The contents thereof should be guided by the requirements of the applicable legislative framework of each country.]

In each jurisdiction, the relevant trust laws in respect of the incorporation and registration of trusts must be considered in order to ensure that this trust deed is compliant.

Please note that any references in this Agreement to [▼] or that have [square brackets] means that such reference must either be inserted or confirmed by the Parties.]

Local Development Toolkit

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1. Introduction

- 1.1.** The Mining Titleholder wishes to establish and participate in local community development initiatives and projects that will contribute positively towards the advancement and the social and economic upliftment of the Communities.
- 1.2.** The Trust is intended for the purpose of:
 - 1.2.1.** Ensuring that the Mining Titleholder complies with and gives expression to section [▼] of the [▼] [insert legislation];
 - 1.2.2.** Participating in educational, empowerment, and enterprise development initiatives that will contribute positively toward the advancement and social upliftment of the Communities;
- 1.3.** The Mining Titleholder has decided to establish the Trust, with its principal objectives being:
 - 1.3.1.** The empowerment of the communities; and implementation of projects that result in the advancement and social upliftment of the Communities;
 - 1.3.2.** To implement, as part of, including but not limited to, the Mining Title Holder's obligations under the Applicable Laws, educational, entrepreneurial, and enterprise development initiatives that will seek to contribute positively towards the upliftment of the Communities;

- 1.3.3. to encourage entrepreneurship, education; enterprise development and economic diversification within the Communities;
 - 1.3.4. to facilitate and manage community-based social upliftment and economic development initiatives;
 - 1.3.5. to promote, manage and initiate projects that create employment within the Communities, in particular community-based initiatives and initiatives aligned with the mining sector;
 - 1.3.6. to encourage the utilisation of linkages into other business imperatives of the Mining Title Holder so as to increase the positive impact of the Mining Title Holder 's operations on the Communities; and
 - 1.3.7. to identify, develop, promote and financially support economic related projects that will contribute towards sustainable economic transformation and growth of the Communities.
- 1.4. Subject to the Applicable Laws, the Trust shall operate independently of the Mining Title Holder and shall at all times be managed and administered by the Trustees, who may be assisted by the Administrator from time to time.
- 1.5. The [▼] must approve the establishment of this Community Development Trust and the Trust Deed in terms of [▼] of the [▼] *[Drafting Note: insert relevant government department / official responsible for the approval of the Trust and the relevant legislation]*

Part I: Interpretation Provisions

2. Interpretation

The headings of the clauses in this Trust Deed are for the purpose of convenience and reference only and shall not be used in the interpretation of nor to modify or amplify the terms of this Trust Deed nor any clause hereof. Unless a contrary intention clearly appears:

2.1. words importing:

2.1.1. any 1 (one) gender include the other 2 (two) genders; and

2.1.2. the singular includes the plural and vice versa; and

2.1.3. natural persons include created entities (corporate or unincorporated) and the State and vice versa;

2.2. for the purposes of this Trust Deed, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.2.1. “**Administrator**” means any person appointed as administrator of the Trust by the Trustees in accordance with clause 14.2.1 below to assist with the administration of the Trust in accordance with the provisions of clause 20 below of this Trust Deed, provided that where any reference is made to the administrator undertaking any actions on behalf of the Trust and if no such administrator is appointed, this Trust Deed shall be read as requiring the Trustees to undertake such actions on behalf of the Trust;

- 2.2.2.** “**Appointment Date**” means the date on which the Trust is registered at the office of [▼] *[Drafting Note: insert relevant institution responsible for registration of trusts, if any]* ;
- 2.2.3.** “**Applicable Laws**” means the constitution, statutes, regulations, enactments, proclamations, ordinances, by-laws, legislated codes, the common law, judicial, administrative, governmental and regulatory judgments, orders, instructions, directives, rules, rulings, authorisations and Approvals and other binding pronouncements or notices of any authority having the force and effect of law or which can be enforced by any authority whether by administrative action or otherwise, and binding conventions and international agreements and/or treaties;
- 2.2.4.** “**Auditors**” means the auditors appointed in terms of clause 15 below of this Trust Deed and holding office as the auditors of the Trust from time to time;
- 2.2.5.** “**Bank**” means any one of the commercial banks carrying on business as such in [insert country] , or such other bank as may be approved by the Mining Title Holder in Writing;
- 2.2.6.** “**Beneficiary**” shall include:
- 2.2.6.1.** the Communities, as determined by the Trustees Mining Title Holder from time to time;
- 2.2.6.2.** for purposes of the Project Activities, any natural person selected by the Trustees in terms of this Trust Deed who is a [▼] , Youth or a woman from the Communities *[Drafting Note: this provision should seek to reflect the demography of the Communities and identify any disadvantaged and vulnerable groups of people that may require empowerment]*;
- 2.2.7.** “[▼]” means the citizens of [insert country];
- 2.2.8.** “**Business Day**” means any Day, except a Saturday, Sunday or official public holiday in [insert country];
- 2.2.9.** “**Committee**” means any duly constituted committee appointed by the Trustees, consisting of at least 3 (three) persons who are Community Members;
- 2.2.10.** “**Communities**” means the [▼] communities and as determined by the Trustees and Mining Title Holder from time to time *[Drafting Note: the definition will be guided by prevailing legislation]*;
- 2.2.11.** “**Community Member**” means a [citizen of the country] who is a resident in the Community;

- 2.2.12.** “**Contribution/s**” means any cash or property which is unconditionally and irrevocably donated or made over to the Trust by a Contributor in pure liberality and with disinterested benevolence and for which there are no reciprocal obligations, and which does not confer a direct or indirect benefit on any Contributor, to be evidenced by the Contributor confirming that the disposal is intended as a Contribution as contemplated in this Trust Deed;
- 2.2.13.** “**Contributor**” means any person who provides a Contribution to the Trust;
- 2.2.14.** “**Costs**” means all lawful, reasonable and necessary costs, charges, expenses and tax (if any) incurred by the Trustees and/or the Administrator on behalf of the Trust in connection with the management and administration of the Trust including, if for any reason the Trustees are at any time required to furnish security, the costs from time to time of furnishing such security, their remuneration and any tax that may become payable by them in their representative capacity in respect of the income of the Trust;
- 2.2.15.** “**CSI**” means the ‘Corporate Social Investment’ programmes adopted by the Mining Title Holder from time to time;
- 2.2.16.** “**Day**” means a calendar day;
- 2.2.17.** “**Discretion**” means, where used in the context of the Trustees, their sole, absolute and unfettered discretion;
- 2.2.18.** “**Encumbrance**” means:
- 2.2.18.1.** any mortgage, pledge, lien or cession conferring security, hypothecation, security interests, preferential right or trust arrangement or other arrangement securing any obligation of any person;
 - 2.2.18.2.** any arrangement under which money or claims to, or for the benefit of, a Bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person; or
 - 2.2.18.3.** any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security.
- 2.2.19.** “**Financial Adviser**” shall have the meaning ascribed to that term in clause 14.2.2 below;
- 2.2.20.** “**Financial Year**” means [▼] the financial year of the Trust, as set out in clause 18 below;

- 2.2.21.** “**Mining Title**” means *[insert full description of mining title and reference to the law it was issued in terms of]*;
- 2.2.22.** “**Mining Title Holder**” means [▼];
- 2.2.23.** “**Minister**” means the Minister responsible for mineral resources;
- 2.2.24.** “**Month**” means a Gregorian calendar month;
- 2.2.25.** “**Parties**” means the Mining Title Holder and the Trustees, and “**Party**” means any one of them as the context may indicate;
- 2.2.26.** “**Policies**” means the policies, regulations, directives, guidelines, procedures and other documents of the Mining Title Holder and/or any company within the Mining Title Holder’s group of entities from time to time which may be applicable to the Trust by virtue of the Mining Title Holder having established the Trust, and which shall be made available to the Trust and the Trustees by the Mining Title Holder;
- 2.2.27.** “**Project Activities**” means the projects to be implemented by the Trust for purposes of achieving the Trust Objects which are approved by the Trustees in Writing and subject to the provisions of this Trust Deed;
- 2.2.28.** “**Registration Date**” means the date on which this Trust Deed is registered with *[insert relevant institution as prescribed by the relevant trust law, if applicable]*;
- 2.2.29.** “**Related**” means shall have the meaning ascribed to that term in *[insert definition provided in applicable Company’s Act, if applicable]*;
- 2.2.30.** “**Signature Date**” means the date of signature of this Trust Deed by the Party signing last in time, provided all Parties sign this Trust Deed;
- 2.2.31.** “**Statutes**” includes *[insert statute(s) applicable to the law of trusts]*, and any other statute affecting the performance by the Trustees of their duties or functions in terms of this Trust Deed;
- 2.2.32.** “**Trust**” means the [▼] Community Development Trust, constituted by this Trust Deed;
- 2.2.33.** “**Trust Activities**” means conceptualising, implementing and managing the Project Activities;
- 2.2.34.** “**Trust Assets**” means, at any time, the assets of the Trust, including capitalised Trust Income;

2.2.35. “**Trust Deed**” means this trust deed including any annexures thereto, as amended from time to time;

2.2.36. “**Trust Fund**” means collectively:

2.2.36.1. the Trust Assets; and

2.2.36.2. the Trust Income;

2.2.37. “**Trust Income**” means Contributions and any other donations and income that may accrue to the Trust from time to time, as well as any income earned therefrom;

2.2.38. “**Trust Objects**” means the objects of the Trust as set out in clause 4;

2.2.39. “**Trustees**” means the trustees of the Trust holding office as such in terms of this Trust Deed;

2.2.40. “**Unanimous Resolution**” means a resolution:

2.2.40.1. passed by more than 50% (fifty per cent) of the Trustees who are present at, or are otherwise participating in a meeting of Trustees, provided that a quorum is present at such meeting in accordance with the provisions of this Trust Deed; or

2.2.40.2. passed and signed by all the Trustees, in Writing, but which is not passed at a meeting of the Trustees, which shall be valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted, and such resolution may be signed in counterparts and shall have effect from the date of the last signature in time;

2.2.41. “**Writing**” means any writing, however produced or communicated, including a telefax, e-mail and appearing in any one or more forms of any kind, including print, typescript and manuscript, and “**Written**” shall have a corresponding meaning;

2.2.42. “**Year**” means a period of 12 (twelve) consecutive Months;

2.2.43. “**Youth**” means natural persons from the age of [▼] years to the age of [] years [insert years in accordance with the Applicable Laws],

2.3. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Trust Deed;

- 2.4.** any reference to an enactment or subordinate legislation is to that enactment or subordinate legislation as at the Signature Date and as amended or re-enacted from time to time. Any reference to a particular section in an enactment is to that section as at the Signature Date and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of the section contained in this Trust Deed are changed, the provisions of this Trust Deed shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 2.5.** if any term is defined within the context of any particular clause in this Trust Deed, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Trust Deed, notwithstanding that that term is not defined in this clause 2;
- 2.6.** when any number of Days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last Day, unless the last Day falls on a day that is not a Business Day, in which case the last Day shall be the next succeeding Business Day;
- 2.7.** when any number of Months or Years is prescribed in this Agreement, same shall be calculated from a specific Day of a Month in a specific Year, to the numerically corresponding Day and Month in the following Month(s) or Year(s), as the case may be, less 1 (one) Day, unless the last Day falls on a Day that is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.8.** any reference to business hours shall be construed as being the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based upon **[insert country name]** Standard Time;
- 2.9.** the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of such contract, shall not apply;
- 2.10.** the words “**include**”, “**including**” and “**in particular**” shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s; and
- 2.11.** the words “**other**” and “**otherwise**” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

Part II: Establishment of Trust, Funding Requirements and Activities of the Trust

3. Establishment of Trust

- 3.1.** A Trust to be known as the [▼] COMMUNITY DEVELOPMENT TRUST is hereby constituted.
- 3.2.** The Trust is established as a [insert entity type].
- 3.3.** The Trust will implement, as part of including but not limited to the Mining Title Holder's obligations under the Applicable Laws, educational, entrepreneurial and enterprise development initiatives that will seek to contribute positively towards the upliftment of the Communities.
- 3.4.** The Trust shall be administered by the Trustees, as assisted by the Administrator (to the extent that one is appointed), for the benefit of the Beneficiaries and in the manner and upon the terms and conditions set out in this Trust Deed.

4. Implementing the Trust Objects

- 4.1.** In order to achieve the Trust Objects, the Trust shall receive and utilise the Contributions to perform the Trust Activities.
- 4.2.** In implementing the Trust Objects, the Trustees shall at all times ensure that:
- 4.2.1.** the Trust Fund is utilised and applied in order to achieve the Trust Objects;
 - 4.2.2.** no Trust Activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Mining Title Holder, otherwise than by way of reasonable remuneration payable to that fiduciary or employee;
 - 4.2.3.** the Trust Activities are for the benefit of, or widely accessible to, the general public at large, including any sector thereof, other than small and exclusive groups.

5. Establishment of the Trust Fund

- 5.1.** The Trustees must establish and maintain the Trust Fund. In this regard the Trustees shall stand possessed of and shall (together with the Administrator, to the extent that one is appointed) be responsible for the administration of the Trust Fund and the application thereof, and from time to time to realise, transpose, re-invest or otherwise deal with the Trust Fund as they may determine in order to fund the Trust Activities.
- 5.2.** The Trust may also, from time to time, borrow from the Mining Title Holder such amounts as the Trustees consider necessary in furtherance of the Trust Objects, on terms to be agreed upon by the

Trustees and the Mining Title Holder from time to time. To this end the Mining Title Holder may, from time to time, provide any funding which the Trust may reasonably require from time to time by way of Contributions, loans or otherwise, which the Trustees may apply towards achieving the Trust Objects.

- 5.3.** All proceeds received or realised by the Trustees from the sale or realisation or transposition of any of the Trust Assets or investments of the Trust Fund shall be invested and re-invested by them in accordance with the provisions of this Trust Deed.

6. Contributions to the Trust Fund

- 6.1.** Any Contributions made to the Trust shall immediately vest in the Trustees, but always be subject to the terms of this Trust Deed.

- 6.2.** The Trust shall receive Contributions primarily from:

6.2.1. the Mining Title Holder;

6.2.2. the Mining Title Holder for purposes of complying with the Mining Title Holder's obligations in terms of the Applicable Laws; and

6.2.3. any person which shall be of a general, lawful and external nature and which are intended to directly benefit the livelihood of the Beneficiaries.

- 6.3.** The Trustees shall not be entitled to accept or receive any Contribution which is revocable at the instance of the Contributor thereof for reasons other than a material failure to conform to the designated purposes and conditions of such Contribution.

- 6.4.** To the extent that the Contributor in question does not attach any condition as to how any Contributions or grants shall be utilised, the Trustees shall use same in the furtherance of the Trust Objects. To the extent that the Contributor in question attaches any condition which stipulates usage of funds contrary to the Trust Objects, the Trustees should not accept the Contributions.

Part III: Trustees

7. Appointment of Trustees

7.1. It is recorded that the current Trustees have accepted their appointment as such and undertaken to commence carrying out all the duties, functions and obligations incumbent upon them in terms of this Trust Deed.

7.2. Number and appointment of Trustees

7.2.1. There shall at all times be at least [▼] Trustees in office, which Trustees will be appointed in compliance with the provisions of clause 7.2.2 below.

7.2.2. The [▼] shall at all times be entitled to appoint, remove and replace the Trustees on Written notice to all of the Trustees, provided that the Mining Title Holder shall ensure that at all times after the Appointment Date that at least [▼] of the Trustees shall be a Community Member *[Drafting Note: this should be adapted to the circumstances of the country with consideration given to ensuring that trustees are selected from disadvantaged and vulnerable groups e.g. women, disabled and reflect the demography of the country]*:

7.2.2.1. if at any time after the Appointment Date the number of Trustees falls below [▼] for any reason whatsoever and a new Trustee or Trustees has/have not been appointed by the [▼] in accordance with this clause 7.2.2, the remaining Trustee(s) shall, as soon as is practicable, assume some other person or persons to act with him or them so as to bring the number of Trustees up to [▼]; and

7.2.2.2. if he or they fail to do so within [▼] Days of the vacancy occurring, or if there are no Trustees, the Auditors, or if there are no Auditors, the [▼] *[Drafting Note: insert appropriate independent body]* shall make the

necessary appointment or appointments until any such assumption or appointment is made, the remaining Trustees or Trustee shall be entitled to continue to act in all matters affecting the Trust.

- 7.2.3.** The Trustees shall have the powers of assumption and co-option as contemplated in clause 7.2.2 above.
- 7.2.4.** Any assumption or appointment of a Trustee or Trustees shall be effected by means of a Written document under the hand of the person or persons entitled to make it.
- 7.2.5.** Subject to clause 7.2.2, each Trustee shall serve as a trustee for a maximum period of 5 (five) years and thereafter, each Trustee shall resign and no longer serve as a trustee of the Trust.
- 7.2.6.** Any Trustee appointed by the [▼] or otherwise in accordance with clause 7.2.2 above shall only commence carrying out all the duties, functions and obligations incumbent upon them in terms of this Trust Deed once they have been duly appointed by **[insert appointing authority/body/institution]**.
- 7.2.7.** No Trustee shall have the right during his lifetime or by last will and testament to appoint his successor or an alternative Trustee to him or a person to serve as Trustee in his place and stead.
- 7.2.8.** In the event that the Applicable Laws requires the appointment of any additional Trustees, the current Trustees shall ensure that the additional Trustees are appointed in accordance with the relevant provisions of the Applicable Laws.

7.3. Disqualification of Trustees

- 7.3.1.** The following persons shall be disqualified from acting as a Trustee (and any Trustee in office that does not qualify to act as a Trustee shall immediately cease to act as a Trustee):
- 7.3.1.1.** any person who would be disqualified from acting as a director of a company in terms of the Applicable Laws **[insert applicable company law]**; or
 - 7.3.1.2.** any person removed from an office of trust on account of misconduct; or
 - 7.3.1.3.** any person whose estate has been sequestrated and has not yet been rehabilitated **[Drafting Note: please insert appropriate terminology in accordance with the applicable insolvency law]**; or

- 7.3.1.4. any person who has been declared by a competent court to be mentally ill or incapable of managing his own affairs or if he is by virtue of the any applicable law, detained as a patient in an institution or as a State patient or whom all of the other Trustees consider, in their Discretion, to be incapable of managing his affairs; or
- 7.3.1.5. any person who has been convicted in [insert country] or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine; or
- 7.3.1.6. any person who is in material breach of this Trust Deed and/or the Policies (as determined by the Mining Title Holder, acting reasonably).

7.4. The office of a Trustee shall be vacated if:

- 7.4.1. he becomes disqualified in terms of clause 7.3.1 above;
- 7.4.2. an application is filed for the sequestration or liquidation of his estate upon which a provisional order of sequestration or liquidation is subsequently granted, or an application is filed for the surrender of his estate or for an administration order or if he commits an act of insolvency as defined in the insolvency law for the time being in force or if he makes any arrangement or composition with his creditors generally; **[Drafting Note: please insert appropriate terminology in accordance with the applicable insolvency law]**
 - 7.4.2.1. he resigns his office by not less than 30 (thirty) Days' (or such shorter period as the remaining Trustees or Trustee may agree to) Written notice to the remaining Trustee/s and the Master;
 - 7.4.2.2. he dies; or
 - 7.4.2.3. he is removed from office by the [▼] in terms of clause 7.2.2 above.

7.5. Communication with Beneficiaries regarding Trustees

The names and contact details of all the Trustees shall be distributed by the Administrator to each Beneficiary in Writing on an annual basis, and Beneficiaries shall at all times be entitled to obtain such details from the registered office of the Trust.

8. Meetings and Proceedings of Trustees

8.1. The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, provided that they shall meet together at least 2 (two) times in each Financial Year.

8.2. In respect of all meetings of the Trustees:

8.2.1. any Trustee is at all times entitled to convene a meeting of the Trustees by giving [▼] Days Written notice to all Trustees, or on such shorter notice as may be agreed by all the Trustees in Writing;

8.2.2. the Trustees may participate in a meeting of the Trustees by means of conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other and any such participation in a meeting shall constitute presence in person at the meeting;

8.2.3. the Trustees may, from time to time, elect a chairperson to hold office for such period/s as they may determine;

8.2.4. the chairperson of the Trustees for the time being shall chair all meetings of Trustees, provided that if that chairperson is not present at a meeting of Trustees, the Trustees present at that meeting shall elect a chairperson for that meeting;

8.2.5. from the Appointment Date, [▼] Trustees shall constitute a quorum at meetings of the Trustees. If within [▼] minutes after the time appointed for such meeting a quorum is not present, the meeting shall stand adjourned to a date not earlier than [▼] Days and not later than [▼] Days after the date of the meeting, and if at such adjourned meeting a quorum is not present within [▼] minutes after the time appointed for the adjourned meeting, the Trustees present shall constitute a quorum for that adjourned meeting;

- 8.2.6.** subject to the provisions of clause 8.2.8 below, decisions to be taken by the Trustees present at a meeting of Trustees shall take place by majority vote, with the decision of the majority deemed to be the decision of all of the Trustees;
- 8.2.7.** the chairperson at a meeting of Trustees shall not have a deciding or casting vote;
- 8.2.8.** no decision of the Trustees in relation to any of the matters set out in this clause 8.2.8 shall be of any force and effect unless at least 75% (seventy five per cent) of the votes of Trustees have been exercised in favour of such matters, in addition to any other requirements applicable in terms of this Trust Deed:
- 8.2.8.1.** any variation, alteration, supplementation or amendment to this Trust Deed;
 - 8.2.8.2.** any acquisition by the Trust of any assets of or interest in any person;
 - 8.2.8.3.** the disposal by the Trust of any of its material Trust Assets, with the Trustees and the [▼] having to agree from time to time on what constitutes a “material” Trust Asset and, in the absence of such agreement, the disposal by the Trust of any Trust Asset shall be deemed to be “material”;
 - 8.2.8.4.** the Encumbrance by the Trust of any of its Trust Assets;
 - 8.2.8.5.** the borrowing of any money and/or the incurral of any liabilities (whether actual or contingent) by the Trust;
 - 8.2.8.6.** the making of any loan or granting of any credit, or the furnishing of any financial guarantee, suretyship, bond or indemnity of whatsoever nature or the assumption of any liability of whatsoever nature;
 - 8.2.8.7.** the passing of any resolution relating to and/or in connection with the subjection of the Trust to any voluntary proceedings whatsoever under any law, regulation and/or other procedure relating to and/or concerning insolvency, winding-up, reconstruction and/or readjustment of debt or relief from creditors;
 - 8.2.8.8.** the entering by the Trust into any agreement which is outside the normal course of the Trust Activities or which is in the normal course of the Trust Activities but will have a material financial impact on the Trust. The Trustees and the [▼] may agree from time to time on what constitutes a “material financial impact” as aforesaid and, in the absence of such agreement, all agreements entered into by the Trust shall be deemed to have a “material financial impact” on the Trust;

9. Powers of the Trustees

9.1. The Trustees shall be empowered to carry on the Trust Activities in order to achieve the Trust Objects, but shall not be empowered to:

9.1.1. other than in respect of the payment of Costs in terms of clause 19, distribute any part of the Trust Fund to any person other than in carrying out the Trust Activities in the furtherance of the Trust Objects; or

9.1.2. in accordance with clause 12 below, pay any remuneration which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with the Trust Objects.

9.2. Subject to clause 9.1 above and the remaining provisions of this Trust Deed, the Trustees shall, in addition to all powers enjoyed by them under the common law or by the Statutes, have the following powers, provided that the Trustees shall exercise such powers strictly for the sole purpose of carrying out the Trust Activities (and in consultation with the Administrator, to the extent that one is appointed):

9.2.1. to open and operate Bank accounts in the name of the Trust with any Bank, with or without any overdraft facility available in respect thereof, to draw, accept, make or endorse cheques, bills of exchange or promissory notes for and on behalf of the Trust;

9.2.2. to deposit with and to allow to remain in the possession of a Bank in **[insert country]** as the Trustees may think fit, any part of the Trust Fund;

9.2.3. to borrow such amounts as the Trustees consider necessary from time to time, on terms to be agreed upon by the Trustees;

9.2.4. to accept and acquire for the purpose of the Trust and to repudiate, reject or decline in whole or in part, any contributions, bequests or payments from any entity that may be given, bequeathed or paid to them, as an addition or with the intention to add to the funds donated to them and any additions so accepted and acquired shall be deemed to form part of the Trust Fund to be administered and dealt with subject to the terms of this Trust Deed;

- 9.2.5.** to contract on behalf of the Trust, and to adopt and accept for the Trust benefits under contracts entered into for the benefit of the Trust, whether before or after its creation, subject always to such limitations, if any, as may be imposed by this Trust Deed, provided that the Trustees shall under no circumstances, subject to the Statutes, be personally liable on any such contract;
- 9.2.6.** to acquire immovable and movable Trust Assets, both corporeal and incorporeal;
- 9.2.7.** to grant a lease in respect of any property (whether immovable or immovable, corporeal or incorporeal) which is donated or bequeathed to or otherwise acquired by the Trust in the form in which they receive it for such period as they in their Discretion deem fit;
- 9.2.8.** to turn any Trust Assets to account from time to time by way of exchange, sale or otherwise without limitation and, in exercising any powers of sale, whether conferred in terms of this clause 9.2.8 or otherwise, to cause such sale to be effected by public auction, public tender or private treaty, as they in their Discretion may consider fit, with power to invest the proceeds of any realisation and any other amount from time to time in their hands in such manner and in such place as they in their Discretion deem fit and to realise and vary any such investments from time to time, provided that, until invested in such manner as is permitted by this Trust Deed, the cash resources of the Trust shall be deposited with one or more Banks;
- 9.2.9.** to pay to any Beneficiary any amount due to the Beneficiary in cash or in kind or partly in cash and partly in kind, with the power in their Discretion to determine the selection and valuation of any Trust Assets to be distributed and the manner of distribution thereof among Beneficiaries provided that:
- 9.2.9.1.** the Trustees may employ a valuer for the purpose of determining the value of any such Trust Assets;
- 9.2.9.2.** the decision of the Trustees as to the value of any Trust Assets for the purpose of this paragraph shall be final and binding on all interested persons; and
- 9.2.9.3.** no Beneficiary may dispute the value of any such Trust Assets;
- 9.2.10.** subject to clauses 12 and 14 below, to reimburse themselves from the Trust Fund for all expenses which may be reasonably incurred by them in or about the carrying on of the Trust Activities and the powers conferred upon them, and, without detracting from the a foregoing, to employ professional advisers, consultants, agents and other people whomsoever to carry out the Trust Objects and to pay their fees, commissions, remuneration and other charges out of the Trust Fund and to confer upon any agents so appointed the right to exercise any Discretion which may be vested in the Trustees;

- 9.2.11.** be capable of bringing, defending, opposing, withdrawing, settling and/or otherwise acting on behalf of the Trust in connection with any proceedings whatsoever in or before any court, or in any arbitration, or before any other forum, provided that all costs reasonably incurred by them in that regard shall be for the account of the Trust;
 - 9.2.12.** to call in, recover, collect and sue for all moneys owing to the Trust, to foreclose bonds, to buy in securities, to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary for those purposes;
 - 9.2.13.** to sign and execute transfers and cessions of property, bonds, consents to cancellations of bonds, leases, servitudes and other deeds and powers of attorney relating thereto, and generally all documents of any nature whatsoever as may be necessary from time to time in connection with the acquisition, realisation, disposal or Encumbrance of Trust Assets of or for the Trust and the carrying out of the terms of this Trust Deed;
 - 9.2.14.** to compromise, compound, submit to arbitration or settle upon such terms and conditions as they may deem advisable all claims made by or against the Trust or them in their capacity as Trustees or matters arising in relation to the Trust and all compromises and settlements effected by them shall be final and binding on all Beneficiaries under this Trust Deed;
 - 9.2.15.** generally to do all things required to give effect to the terms of this Trust Deed; and
 - 9.2.16.** to exercise such further rights, powers and authorities as may from time to time be conferred upon them in terms of this Trust Deed;
- 9.3.** Without prejudice to any of the foregoing, the Trustees shall comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences, consents required in or by Applicable Laws to enable them lawfully to enter into and to perform their obligations in terms of this Trust Deed, and to ensure the legality and enforceability of this Trust Deed;

10. Duties of the Trustees

10.1. General duties

10.1.1. Without in any way derogating from the generality of the fiduciary duties of the Trustees, they shall in particular be obliged to:

10.1.1.1. accept any Contributions which may be made by testamentary bequests or by any other means, subject to the conditions set out in this Trust Deed relating to Contributions;

10.1.1.2. from time to time open and/or hold a banking or similar account with a financial institution as defined by the Applicable Laws in the name of the Trust and to deposit in such account all moneys which are due to the Trust in the first instance;

10.1.1.3. administer the Trust Fund and the application thereof and income accruing thereto in order to achieve the Trust Objects;

10.1.1.4. utilise the Trust Fund solely for the Trust Objects or to invest the Trust Fund in accordance with the provisions of Applicable Laws;

10.1.1.5. keep proper and comprehensive books of account and records; and

10.1.1.6. retain any books of account, records or other documents in respect of the Trust or the Trust Fund for a period of [▼] Years.

10.1.2. The assets of the Trust Fund shall not be invested in any private company in which a Trustee, or any person Related to a Trustee, is the beneficial owner of any shares, unless the conflict of interest is adequately disclosed in Writing by the Trustee concerned to the remaining Trustees prior to the investment being made and the investment is then approved by each of the disinterested Trustees.

10.2. Duties of Trustees to ensure compliance with Applicable Laws

10.2.1. The Trustees shall carry out the Trust Activities in the furtherance of the Trust Objects and select the Beneficiaries in a manner that gives effect to the Applicable Laws

10.2.2. The Trustees shall keep a register in relation to each Beneficiary and ensure that the register shall be accessible to any Beneficiary or the Minister upon reasonable request, and shall be open for inspection at the official office of the Trust during business hours.

11. Discretion, Exemptions and Privileges of the Trustees

- 11.1.** Subject to the Applicable Laws, the Trustees shall be exempt from any obligation to furnish security in connection with their appointment and/or for the due administration of the Trust to the Master or any other person, body or authority.
- 11.2.** Where this Trust Deed provides for the exercise of a Discretion by the Trustees or the exercise of any power in their Discretion, save to the extent that is otherwise provided in this Trust Deed, the Discretion shall be the sole and absolute Discretion of the Trustees as they /deem? fit provided that the Trustees must at all times exercise their Discretion in a manner which they consider to be advisable for the best interests of all of the Beneficiaries in accordance with the Trust Objects.
- 11.3.** Subject to Applicable Laws:
- 11.3.1.** no Trustee shall be liable to make good to the Trust or any Beneficiary any loss occasioned or sustained by any cause, howsoever arising, except such losses as may arise from or be occasioned by his own personal dishonesty or other wilful misconduct or gross negligence;
 - 11.3.2.** no Trustee shall be liable for any act of dishonesty or other misconduct committed by any other Trustee unless he knowingly allowed it or was an accessory to such dishonesty or other misconduct;
 - 11.3.3.** the Trustees shall be indemnified out of the Trust Fund against all claims and demands of whatsoever nature that may be made upon them arising out of the reasonable exercise or purported exercise of any of the powers hereby conferred upon them; and
 - 11.3.4.** the Trustees may rely, and shall not incur any liability as a consequence of relying, on any document, resolution or the like (or any copy thereof) which they reasonably believe to be authentic.

12. Remuneration and Reimbursement of the Trustees

The Trust may pay remuneration to the Trustees for their services as such, provided that:

- 12.1.** such remuneration shall only be paid out of the Trust Income;
- 12.2.** the Mining Title Holder has approved of the payment of such remuneration in Writing;
- 12.3.** the Trust only pays reasonable (and not excessive) remuneration having regard to what is generally considered reasonable in the sector and in relation to the service rendered by such Trustees; and
- 12.4.** the payment of such remuneration has not and will not economically benefit any person in a manner which is inconsistent with the Trust Objects.

13. Appointment of Committees and Delegation of Duties

- 13.1.** The Mining Title Holder and the Trustees may from time to time appoint committees.

13.2. The Trustees may from time to time delegate to any individual Trustee or Trustees, or to a Committee, any specific duty or assignment, unless such duty or assignment concerns the distribution of any benefit by the individual Trustee or Trustees concerned to himself or themselves in his or their capacity as Beneficiary or Beneficiaries (as the case may be), provided that the Trustees shall not abdicate such delegated duties and the Trustees shall at all times act according to their fiduciary duties in respect of the delegated duties.

14. Employees and Advisers

14.1. A Trustee may be employed by the Trust in a full-time or part-time capacity (whether as an employee or as an independent contractor) and any firm of which he is an employee, director, member or partner may be employed or engaged to act in any matter relating to the Trust and the administration thereof, and shall receive such remuneration as described in clause 12 above or be entitled to charge and be paid a fee for any services rendered by him or his firm in a professional capacity, including acts which any Trustee could have done personally, as the case may be, provided that such fee is not remuneration for services rendered in his capacity as Trustee.

14.2. The Trustees may:

14.2.1. appoint an Administrator, as more fully set out in clause 20 below; and

14.2.2. from time to time, with the prior Written consent of the Mining Title Holder, appoint an appropriately qualified and experienced independent professional financial adviser, as a consultant (who shall not be an employee of the Trust) (the “**Financial Adviser**”) on terms and conditions to be determined by the Trustees from time to time, to manage and to advise the Trustees in relation to the investment process in respect of any portion of the Trust Fund to be invested by the Trustees.

15. Books of Account and Auditors

- 15.1.** The Trustees, together with the Administrator (if one is appointed), shall keep true and correct records and books of account of their administration of the Trust in such manner and form as is necessary in order that the records and books shall at all times accurately reflect the current position of the Trust. There shall be recorded in such records and books of account, inter alia, any change of the Trust Assets from time to time and the Trust Income and/or the expenses applicable to the administration of the Trust.
- 15.2.** Such records and books of account, together with all other papers and documents connected with or relating to the Trust, shall be kept in the custody of the Trust.
- 15.3.** The Auditors shall have the right of access at all times to the records and books of account of the Trust, and shall be entitled to such information and explanations as may be necessary for the performance of their duties as Auditors.
- 15.4.** The Mining Title Holder and the Trustees shall have the right of access at all times to the records and books of account of the Trust.
- 15.5.** The Trustees shall ensure that the books of account are prepared in accordance with Generally Accepted Accounting Standards in [insert country], and shall ensure that the annual financial statements are audited in accordance with the applicable auditing standards.

Part IV: Beneficiaries

16. Criteria for Qualifying Beneficiaries

- 16.1.** The Trustees shall from time to time, but not less than once every Financial Year, conduct an analysis of the needs and requirements of the Communities and determine the criteria of any *[Drafting Note: insert category of person, this should reflect the demography and disadvantaged and vulnerable groups of the country]* that are eligible to become a Beneficiary of the Trust.
- 16.2.** For the avoidance of any doubt, the criteria laid down by the Trustees must at all times be in accordance with the Trust Objects and be, either directly or indirectly, to the benefit of [insert category].

17. Beneficiaries Appointed by Identification

- 17.1.** The Trustees shall procure that the Administrator shall from time to time, but not less than once every Financial Year, having regard to the criteria determined in terms of clause 16 above, identify

and recommend to the Trustees who is to be appointed as a Beneficiary of the Trust and the benefits which should accrue to such appointed Beneficiaries.

17.2. The Trustees shall, at their Discretion, and based on the recommendations of the Administrator:

17.2.1. select the Beneficiaries;

17.2.2. determine the amount from the Trust Fund that shall be made available to such Beneficiaries, if any; and

17.2.3. determine the manner in which such amount shall be made available to such Beneficiaries.

17.3. It is specifically recorded that the Mining Title Holder shall not interfere with the Discretion of the Trustees in the selection and retention of Beneficiaries, other than to the extent that such Beneficiaries are in conflict with the anti-corruption policies or negatively affect the obligations on of the Mining Title Holder in respect of the Mining Title.

Part V: General Administrative Provisions

18. Financial Year-End

The Financial Year of the Trust shall commence on the first day of January of each year and end on the last day of December of each Year.

19. Costs of the Trust

The Trustees shall pay and make provision for all costs incurred by them on behalf of the Trust out of the income of the Trust Fund, provided that the Trustees shall at all times endeavour to ensure that such costs shall not exceed an amount equal to [insert percentage] of the value of the net after tax income of the Trust in any Financial Year, or such other amounts as may be stipulated in the Applicable Laws from time to time.

20. Administration of the Trust

In addition to any obligations of any Administrator as set out in this Trust Deed, the Administrator may be tasked with any compliance function required in respect of the Trust and shall be appointed to provide all required support and administration services required by the Trust.

21. Amendments to this Trust Deed

21.1. It is recorded, acknowledged and agreed that one of the reasons for the Mining Title Holder procuring the establishment of the Trust is the facilitation of compliance with the Applicable Laws by the Mining Title Holder.

21.2. This Trust Deed may be amended only by means of a Written deed signed by 75% (seventy five per cent) of the Trustees and the Mining Title Holder , provided that:

21.2.1. if an amendment is required reason of the Applicable Laws, such amendment shall be made by a Written deed signed only by the Mining Title Holder;

21.2.2. if at any time the Trust enjoys any exemptions from any tax or duty charged or levied under any law administered by **[insert relevant tax authority]**, no amendment shall be made until a copy of such amendment has been given to **[insert relevant tax authority]**;

21.2.3. such amendment shall not have a materially adverse effect on the deductibility of Contributions to the Trust. The Trustees and the Mining Title Holder may agree from time to time what constitutes a “materially adverse effect” as aforesaid and, in the absence of such agreement, any adverse effect on the deductibility of Contributions shall be deemed to have a “materially adverse effect”.

21.3. Any amendments to this Trust Deed in accordance with the provisions of this clause 21 will only take effect if such amendment is:

21.3.1. reduced to Writing;

21.3.2. signed by or on behalf of the Trustees and the Mining Title Holder ; and

21.3.3. filed with **[insert relevant institution having jurisdiction over trusts, if relevant]**.

21.4. No amendment shall be made which will allow the Trust Fund to (i) be directly or indirectly distributed to any person (other than in the course of undertaking any Trust Activity); and/or (ii) be utilised for a purpose which does not promote the achievement of the Trust Objects as stated in clause 4 above.

22. Termination of the Trust

22.1. The Trust may be terminated upon a Unanimous Resolution to that effect being passed by the Trustees, provided the prior Written consent of the Mining Title Holder is obtained in respect of such termination.

22.2. If, upon the dissolution of the Trust, after due provision for all liabilities and expenses, there remain any Trust Assets and/or cash in the Trust Fund, such Trust Assets and/or cash shall be distributed to any similar **[▼]** which has a similar object/s to those of the Trust, in particular, the undertaking and/or funding of the Trust Activities for the benefit of the Communities.

23. Arbitration

- 23.1.** Any disputes between the Parties arising out of or in connection with this Trust Deed shall be settled by the Parties first attempting in good faith to negotiate a resolution and if a negotiated resolution to the dispute is not agreed to within [▼] Days of the date of a Party's request in writing for such negotiation, or such other period as may be agreed, then the dispute shall be settled in accordance with this clause 23.2.
- 23.2.** If a dispute is not settled by negotiation as contemplated in clause 23.1, it shall be settled by arbitration in accordance with the [▼], as amended or superseded, in force in [insert country].
- 23.3.** The number of arbitrators shall be three. The Minister shall designate one, the Mining Company shall designate one and the two arbitrators so designated shall designate the third arbitrator who shall act as chairperson. If the two arbitrators cannot agree within 3 (three) Days, the third arbitrator shall be designated by the then Chief Justice of the [insert country].
- 23.4.** Arbitration proceedings shall be governed by [insert appropriate rules] in [insert country] according to [insert country] Law.
- 23.5.** An award against the Trustees shall, wherever possible and effective, be enforced in [insert country] or else in any other competent jurisdiction, which shall have jurisdiction to enforce an award against the Trustees. An award against the Mining Title Holder shall be enforced in any court of competent jurisdiction.

24. Domicilium Citandi et Executandi

24.1. Each of the Parties chooses its physical address and contact details referred to below as its *domicilium citandi et executandi* at which documents in legal proceedings and any notices in connection with this Trust Deed may be served -

24.2. Mining Title Holder:

Physical address: [▼]
Email address: [▼]
Attention: [▼]

24.3. Trustees:

Physical address: [▼]
Email address: [▼]
Attention: [▼]

24.4. Any person appointed as a Trustee following the Registration Date shall provide the Trustees and the Mining Title Holder through the Administrator once appointed with written details of his physical address and contact details and such physical address and contact details shall be his *domicilium citandi et executandi* for the purpose of this clause 24.

24.5. Any notice or communication required or permitted to be given in terms of this Trust Deed shall be valid and effective only if in Writing.

24.6. Any Party may by Written notice to the other Party change its chosen addresses or contact details for the purposes of clause 24.1 above to any other physical address(es) or contact details in **[insert country]**, provided that the change shall become effective on the [▼] Day after the receipt of the notice by the addressee.

24.7. Any notice given in terms of this Trust Deed shall:

24.7.1. if sent by a courier service, be deemed to have been received by the addressee on the [▼] Business Day following the date of such sending; and

24.7.2. if delivered by hand during business hours on a Business Day, be deemed to have been received by the addressee on the date of delivery failing which it will be deemed to have been received on the following Business Day; and

unless the contrary is proved.

24.8. Notwithstanding anything to the contrary herein contained, a notice or communication actually received by a Party shall be an adequate notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

25. General

25.1. This Trust Deed constitutes the sole record of the agreement amongst the Parties in regard to the subject matter thereof.

25.2. To the extent permissible by law, no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether or not it induced this Agreement and/or whether it was negligent or not.

25.3. Save as is expressly permitted by this Trust Deed, no Party may assign any of its rights or obligations under this Trust Deed without the prior written consent thereto of the Mining Title Holder.

25.4. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Trust Deed.

26. Severability

Any provision in this Trust Deed which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Trust Deed shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (pro non scripto) and severed from the balance of this Trust Deed, without invalidating the remaining provisions of this Trust Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

27. Governing Law

This Trust Deed shall be governed by, determined, interpreted and construed in accordance with the laws of **[insert country]**.

28. Counterparts

This Trust Deed may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Parties may enter into this Trust Deed by signing any such counterpart.

Mining title holder

Signature:

who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

Witness:

Witness:

[Insert trustee name]

Signature:

Date:

Place:

Witness:

Witness:

[Insert trustee name]

Signature:

Date:

Place:

Witness:

Witness:

African Mining Legislation Atlas (AMLA)

Appendix D: Community Development Agreement

Pursuant to Article [▼] of the [INSERT RELEVANT LAW]

entered into between

[COMMUNITY NAME]

(Represented by the duly elected/authorised [insert executive committee or association or traditional leader or authorised body such as trust, company or association])

[General Note: *Communities often comprise a diverse group of individuals. Communities are also not homogenous and may have diverse interests in a mining project, with some members who support the project and others that do not. For practical reasons, there have been attempts in various jurisdictions to identify community leaders or authorised representatives. It must be determined in each circumstance whether 'community' is a legal person capable of consenting on behalf of the entire group entering into contracts in its own name and stead.*]

and

[MINING COMPANY]

Registration No. [▼]

[General Note: *The localisation, corporate and/or mining laws will, in part, determine whether an entity incorporated within the jurisdiction in which the mining is to take place will sign the CDA, or whether the contracting entity is a foreign entity. For efficient enforcement of the terms of the CDA, it is advisable for the company that has been issued with the mining title to be the party to the CDA, as opposed to its holding company which may be domiciled in a foreign jurisdiction, and has no ties in the jurisdiction, save for its subsidiary which holds the mining title.*]

[General Note: Please note that any references in this Agreement to [▼] or that have [square brackets] means that such reference must either be inserted or confirmed by the Parties.]

General comments:

1. *The most important issue regarding CDAs is to consider the mineral regulatory frameworks that contemplate them. Depending on the framework applicable, the parties to the CDA may be the mining company and the relevant community or the latter together with relevant state entities;*
2. *The next perennial issue is the legal nature/standing/locus of the community. The question that must be answered is whether a 'community' is a legal person capable of entering into enforceable contracts in its own name and stead. This is a complex question, with multiple layers of potential legal consequences: how is the 'community' organised? Traditional communities typically have a leadership system by which they are organised. Urban and peri-urban communities are typically organised according to the civic political system (such as municipal systems). Membership of communities is also complex. Traditional communities are less mobile and dynamic and are based on kinship. Urban communities are mobile and dynamic, based on migration patterns. The establishment of mines introduce new migrants into urban and rural communities, including migrant workers and their families. There are many other issues, including the allocation of benefits that trickle to the community. Should these benefit trickle into each family, per stirpes, or endure for the collective benefit of the community? Governance of these communities is a critical aspect of resource governance. It must be addressed in the tool kit. Ultimately, therefore, serious consideration must be given to the legal entities that must house community interests. These entities may be incorporated or take the form of trusts (the latter requiring much more consideration given the laws applicable to the formation and administration of trusts and their relative informality);*
3. *If the CDA is part of the mining authorisation or conditions of the mining title, then the state must be a party, through whichever entity is relevant;*
4. *Flowing from 3 above, exactly what is a CDA? Is it a best practice instrument? Is it a legal requirement for the grant of a mining authorisation? Is it a condition of the mining authorisation? These are fundamental questions. In the context of Africa, given its political economy and history, a loose CDA arrangement can never be best practice. Ultimately, the task is to develop an African standard, an African best practice that addresses the specific situation of African community development*
5. *Where the Government is not a party to the CDA, then the Government must approve the CDA.*

African Mining Legislation Atlas (AMLA)

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Preamble

Recognising that the African continent is endowed with valuable mineral resources;

Recognising that the exploitation of such resources has not always resulted in optimal and sustainable benefits for local communities;

Recognising that Local development can be utilised to derive shared value from the exploitation of mineral resources;

Noting that the purpose of this Agreement is to promote sustainable development and to enhance the general welfare and quality of life of the mining communities within the [▼] region;

Recognising that [▼] is legally required to assist in the sustainable development of local communities affected by its mining operations;

Noting that the Parties wish to build a lasting relationship to achieve the complimentary goals of mineral development, sustainable local development, and inclusive growth in [▼]

Committed to full transparency and good governance and eschewing all forms of maladministration of funds allocated for local development;

Conscious of the opportunities presented by the mining sector to drive sustainable local development and to contribute to sustainable development and livelihoods;

Noting that the community development projects contemplated herein must complement government led development and that the parties' obligations in this Agreement do not substitute government service responsibilities.

WHEREBY IT IS AGREED AS FOLLOWS:

Part I: Introductory Matters

1. Parties

The Parties to this Agreement are:

- 1.1. [▼] Community, defined as [▼], represented by [▼] as agreed by resolution on [▼]/written authority attached hereto as annexure A; and
- 1.2. [▼], a company duly incorporated in accordance with the laws of [▼] (Company Registration Number: [▼]), who is the holder of the Mining Title.

(hereinafter collectively referred to as the “Parties”).

2. Interpretation and Preliminary

The headings of the clauses in this Agreement are for purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

2.1. words importing:

- 2.1.1. any one gender includes the other genders;
- 2.1.2. the singular include the plural and vice versa; and
- 2.1.3. natural persons include created entities (corporate or unincorporated) and the state and vice versa;

2.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 2.2.1. “**Agreement**” means this community development agreement, including any and all schedules and annexures attached concluded pursuant to article/section [▼] of the **[Relevant Mining Code]**;
- 2.2.2. “**Applicable Laws**” means the constitution, statutes, regulations, enactments, proclamations, ordinances, by-laws, legislated codes, the common law, judicial, administrative, governmental and regulatory judgments, orders, instructions, directives, rules, rulings, authorisations and Approvals and other binding pronouncements or notices of any authority having the force and effect of law or which can be enforced by any authority whether by administrative action or otherwise, and binding conventions and international agreements and/or treaties;
- 2.2.3. “**Approvals**” means any and all approvals as may be required under the Applicable Laws from time to time;
- 2.2.4. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in **[insert name of country]**;
- 2.2.5. “**CDC**” means community development committee established to represent the Community in accordance with clause 18 of this Agreement;
- 2.2.6. “**Community**“ means

Alternative 1.

a community that has the potential to be significantly negatively or positively impacted by mining operations

Alternative 2.

a community that has been specifically identified in an [environmental and social impact assessment] required under the [Environmental Protection Act] as having the potential to be significantly negatively or positively impacted by mining operations;

Alternative 3.

the single community of persons mutually agreed by the mining right holder and the [local authority]: Provided, if the mining right holder and [local authority] cannot agree on which community is the qualified community, the mining right holder may notify the [Minister, Ministry, Director of Mines] requesting clarification, and the [Minister, Ministry, Director of Mines] shall notify the mining right holder, specifying which community is the qualified community.

Alternative 4.

a community of persons residing within [text (number)] kilometres of any boundary defining the mining right area.

2.2.7. “**Community Development Fund**“ means the amount equivalent to [▼] percent ([▼] %) of the Net [▼] Sales Revenue paid annually into the Community Development Agreement account for the sole purpose of development within the local communities pursuant to Section [▼];

2.2.8. “**Community Projects**” means the community projects contained in Annexure D of this Agreement;

2.2.9. “**Deed of Adherence**“ - means the deed of adherence substantially in the form of the deed of adherence attached hereto as Annexure C;

2.2.9.1. “**Effective Date**” means the date upon which the condition precedent in clause 4 is fulfilled;

2.2.10. “**Local District Plan**” means [▼];

2.2.11. “**Mine**” when used as a:

2.2.11.1. verb, means any operation or activity for the purpose of winning any mineral on earth, sea and/or tailings, and “**Mining**” shall have a corresponding meaning; and

2.2.11.2. noun, means the mine located on the Mining Area;

- 2.2.12.** “**Mining Area**“ means the area in respect of which the Mining Title has been issued/granted;
- 2.2.13.** “**Mining Title**” means [insert full definition of mining title and reference to the law it was issued in terms of];
- 2.2.14.** “**Mining Title Holder**” means [▼] (Registration Number: [▼]) a company duly incorporated in accordance with the laws of [▼];
- 2.2.15.** “**Minister**“ means the Minister responsible for mineral resources and includes any person to whom the Minister has lawfully delegated powers and functions in terms of article/section [▼] of the [▼];
- 2.2.16.** “**Parties**” means the parties to this Agreement, namely, the Community, the Mining Title Holder and the Minister, and “**Party**” shall mean either of them, as the context requires;
- 2.2.17.** “**Steering Committee**” means the Steering Committee established to represent the [▼] Community in accordance with clause 24 of this Agreement;
- 2.3.** any reference in this Agreement to an enactment or legislation is to that enactment or legislation as at the Signature Date and as amended or re-enacted or replaced from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment or legislation is to that section as at the Signature Date, and as amended, re-enacted or replaced from time to time and/or equivalent measure in such enactment or legislation, provided that if as a result of such amendment, re enactment or replacement, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 2.4.** any reference in this Agreement to any other Agreement or document shall be construed as a reference to such other Agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 2.5.** if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

- 2.6.** when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day;
- 2.7.** where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.8.** reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 2.9.** if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 2.10.** the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 2.11.** any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 2.12.** the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 2.13.** any reference in this Agreement to any other Agreement or document shall be construed as a reference to such other Agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and

- 2.14.** the words “**other**” and “**otherwise**” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

3. Legal Nature of the Agreement

- 3.1.** This Agreement constitutes a binding agreement between the Parties, which shall be effective until the Agreement is terminated in accordance with the terms of this Agreement.
- 3.2.** Any discussions or negotiations between the Parties, any proposals made by the one to the other, whether verbal or in writing, in relation to this Agreement shall not, in any way, impose any rights or binding obligations on them
- 3.3.** Nothing in this Agreement or in the conduct of the Parties in relation to the performance of any obligation in terms of this Agreement shall be deemed or construed as creating a relationship of employment, principal-and-agent, partnership or joint venture between them.

[General Note: *The CDA must bind the mining company to ensure the sustainable development of local communities affected by its mining operations. The binding commitments made in the CDA will aid full transparency, good governance and accountability in relation to the funds allocated for local development.*]

4. Condition Precedent

- 4.1.** This Agreement, save for the provisions set out clauses 36 to 40, which shall be binding on the Parties on and with effect from the Signature Date), is subject to the Condition Precedent being fulfilled, that the Parties procure the approval of this Agreement by **[INSERT RELEVANT GOVERNMENT OFFICIAL]**.
- 4.2.** The Parties shall use their respective best endeavors to procure the fulfilment of the Conditions Precedent, to the extent it is within their power to do so, as expeditiously as reasonably possible, and at the sole cost of the Mining Title Holder.
- 4.3.** In the event that the Conditions Precedent is not fulfilled within **[] ([])** months after the Signature Date, no Party shall have any liability towards the other in the event of this Agreement not being implemented as a result of a failure of the Conditions Precedent.

[General Note: *the State must ensure that there are laws in place in the jurisdiction which require the approval of CDAs and which authorise the relevant body or official to approve the CDAs]*

5. Commencement and Duration

- 5.1.** This Agreement shall commence and take effect on the Effective Date and shall terminate when:
- 5.1.1.** the Parties agree to do so, in writing; or

5.1.2. the Agreement is terminated and such termination is sanctioned by the arbitrator in accordance with the provisions of clause [▼] of this Agreement; or

5.1.3. the Mining Title lapses in accordance with its terms,

whichever is earlier.

5.2. Notwithstanding the termination of this Agreement, the Mining Title Holder is obliged, where termination is as a result of the lapse of the Mining Title in terms of clause 5.1.3, to complete all of the Community projects committed to in terms of this Agreement for the year in which the Mining Title lapses.

6. Obligations of the Mining Title Holder to the [▼] Community

[▼] shall:

6.1. Strive to maintain good relations with the Community, and act in good faith to mitigate potential conflicts and resolve conflicts through discussions and negotiations;

6.2. Expend in every year in which this agreement is in force the amount stipulated for the implementation of this agreement in accordance with the Applicable Laws relating to community development.

6.3. Resolve all conflicts in accordance with the mechanisms provided for in this Agreement and the relevant provisions of the **[INSERT MINING CODE]**;

6.4. Be transparent in all of its dealings with the Community in respect of all aspects of community development and share all information pertaining to community development projects with the Community through its lawful structures;

7. Obligations of the [▼] Community to the Mining Title Holder

The Community shall:

- 7.1.** Strive to maintain good relations with the Mining Title Holder, and act in good faith to mitigate potential conflicts and resolve existing conflicts;
- 7.2.** Collaborate with the Mining Title Holder to promote any sustainable livelihood and socio-economic development efforts undertaken under this Agreement;
- 7.3.** Ensure through the CDC that all members of the Community are regularly informed of the process of the implementation of this Agreement;
- 7.4.** Work with state and non-state development partners in the implementation of this Agreement.

8. Transfer

In the event that the Mining Title is transferred to a third party, the transferor is obliged to ensure that the transferee signs the Deed of Adherence and assume all of the rights and obligations of transferor under this Agreement.

9. Severability

If any provision of this Agreement is found by an arbitrator or court of competent jurisdiction to be void or unenforceable, it shall be deemed to be deleted from this Agreement and the remaining provisions shall continue to apply. The Parties shall negotiate in good faith in order to agree to the terms of a provision to be substituted for the provision found to be void or unenforceable.

10. CDA Annual Report

The Mining Title Holder shall submit to the CDC and the relevant state agency by later than 90 days following each anniversary of the Effective Date, a community development agreement report, which shall describe the implementation of the Community Projects, objectives, activities, milestones and results for January through December during the prior calendar year.

11. CDA Annual Expenditure Report

The Mining Title Holder shall submit to the CDC and **[INSERT RELEVANT GOVERNMENT AUTHORITY]** by **[INSERT DAY AND MONTH]** an unaudited community development annual expenditure report which shall detail the community development expenditures and total expenditure for the relevant period.

Part II: Community Development Projects

12. Community Development Projects

- 12.1.** For the purpose of identifying potential community development projects to be implemented under this agreement, the Local District Plan and the Community Development Action Plan shall function as principal reference documents to guide the CDC.
- 12.2.** Notwithstanding section (1), the CDC can decide to implement a community development project that reflects the existing needs of the community but which has not been included in the Local District Plan or Community Development Action Plan.
- 12.3.** Community development projects implemented under this Agreement should as far as possible complement the goals of the National Development Plan or Agendas.

13. Validation of Community Development Projects

- 13.1.** The CDC shall approve all development projects for implementation. Such approval shall be by way of consensus, failing which by majority vote.
- 13.2.** Upon identification of potential community development projects by the CDC, the Steering Committee shall produce a shortlist of projects it considers feasible for implementation, bearing in mind the immediate identified needs of the community and the availability of funds to complete the projects.
- 13.3.** The shortlisted projects shall be presented to the CDC for their final approval.
- 13.4.** The Chairman of the CDC shall convene an annual meeting of the Community to inform them of all proposed development projects and those chosen to be implemented in a given year.

14. Projects to be Funded by the Community Development Agreement Funds

[General Note: *Each jurisdiction may elect to include Annexure D which details the exact projects intended for implementation together with the timeline. Alternatively, this Annexure may be omitted, and the Mining Title Holder shall be free to implement any projects in accordance with the guideline provided hereunder.*]

- 14.1.** The funds provided by the Mining Title Holder in accordance with its obligations under this Agreement may be used for the Community Projects detailed in Annexure D which may be supplemented by:
- 14.1.1.** educational scholarships, apprenticeships, technical training and creation of employment opportunities for the people of the [▼] Community;

- 14.1.2.** financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services such as roads, water and power;
- 14.1.3.** agricultural projects and marketing of all produce/products related thereto;
- 14.1.4.** assistance with the creation, development and support to small scale and micro enterprises;
- 14.1.5.** special programs which benefit women;
- 14.1.6.** special programs which benefit youths;
- 14.1.7.** special programs which benefit marginalized groups;
- 14.1.8.** protection of natural resources by enhancing environmental;
- 14.1.9.** management, treatment of ecological systems including restoration and enhancement, and using any other appropriate means;
- 14.1.10.** support for cultural heritage and sports; and
- 14.1.11.** any other matters as may be agreed by the Parties in writing.

15. Restrictions on the Use of CDA Funds

- 15.1.** Funds provided by the Mining Title Holder in accordance with its obligations under this Agreement shall not be used for any personal use including but not limited to:

- 15.1.1.** The provision of any passenger car, truck or four-by-four vehicle to any individual of the Community or other than a specialized purpose vehicle such as an ambulance, fire engine or bus; or
- 15.1.2.** The provision of monetary amounts, services, goods or facilities for the sole benefit of an individual or single family unit within the Community.

16. Procurement of Goods and Services

- 16.1.** The procurement of all goods and services under this Agreement shall be consistent with the requirements of the **[INSERT RELEVANT LAWS]**.

17. Award of Contracts

- 17.1.** The bidding for and award of contracts shall be consistent with the requirements of the **[INSERT RELEVANT LAWS]**.

Part III: Community Development Committee

18. Establishment of Community Development Committee

18.1. There is hereby established a CDC comprising the following members:

[▼] [TO INCLUDE RELIGIOUS LEADERS, VULNERABLE PERSONS (INCLUDING REPRESENTATIVES OF WOMEN AND YOUTHS), LOCAL COUNCIL REPRESENTATIVES, REPRESENTATIVES OF COMMUNITY, REPRESENTATIVES OF THE MINING RIGHT HOLDER, RELEVANT GOVERNMENT OFFICIALS]

18.2. [ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON OF COMMITTEE]

18.3. The Chairperson and vice Chairperson of the Committee shall be appointed by members at the first meeting of the Committee.

19. Tenure of Office of Members of CDC

- 19.1.** Every member of the Committee whose membership is by virtue of occupation of a particular office, be it political, traditional, Mining Title Holder position or other, shall continue to retain that membership for as long as such person remains in that office.
- 19.2.** Upon any member ceasing to remain in that office for whatever means or cause his or her replacement shall automatically take over membership.
- 19.3.** Every member of the Committee, other than the Paramount Chief, the Section Chief and the representatives of the Mining Title Holder, shall hold office for a period of four years and shall be eligible for re-appointment for a second term not exceeding four years.
- 19.4.** A member of the Committee may resign in writing addressed to the Chairperson of the Committee and the body on whose behalf he or she sits on the Committee.
- 19.5.** Any vacancy arising in the membership of the Committee, whether through a temporary absence, resignation, death howsoever occurring, may be filled by the body on whose behalf the vacancy has occurred by the appointment of a new representative for the remaining term of that member.

20. Meetings of the CDC

- 20.1.** The Committee shall meet at such times and places as the Chairperson may determine for the dispatch of its business but shall meet at least two times a year.

20.2. Meetings in which the Chairperson is absent shall be chaired by the Vice Chairperson.

20.3. The secretary of the meeting shall be the [▼] or his representative.

20.4. The quorum at a meeting of the Committee shall be fifty percent (50%) of the total membership and should a quorum not be present; the meeting shall be rescheduled to for a date to be determined by the Chairperson.

20.5. Except as otherwise provided for, decisions by the Committee at a meeting shall be arrived at by majority of votes cast.

20.6. In the event there is a tie of votes casts on a particular issue the Chairperson, or in his absence the Vice Chairperson, shall have a casting vote.

21. Disclosure of Interest

21.1. Any member of the Committee who has any interest, directly or indirectly, in any matter to be considered by the Committee, shall disclose the nature of his or her interest, and such disclosure shall be recorded in the minutes of the Committee, and such member shall not take part in any deliberations or decisions of the Committee related to that matter.

21.2. Any member who fails to disclose such interest shall be guilty of misconduct and liable to be removed from the Committee.

22. Secretariat of the CDC

22.1. There shall be a Secretariat of the Committee, which shall also serve as secretariat of the Steering Committee.

22.2. The location of the Secretariat shall be determined by the parties through negotiations.

23. Functions of the CDC

23.1. The CDC shall perform the following functions:

23.1.1. oversee and coordinate all development activities undertaken by the Agreement in the mining communities;

23.1.2. carry out studies of factors militating against the socio-economic development of the communities;

23.2. undertake needs assessment of the mining communities and collate them in order of priority;

23.3. mobilize resources within and without for the development of the mining communities;

- 23.4.** undertake awareness of the mining communities on issues relating to the Agreement;
- 23.5.** identify and encourage mining communities to undertake functional and sustainable livelihood activities;
- 23.6.** assist in the provision of infrastructural and non-infrastructural development for the mining communities;
- 23.7.** protect and promote the interest of mining communities internally and externally;
- 23.8.** collaborate with other development partners for development initiatives in the mining communities;
- 23.9.** ensure peaceful co-existence between the Mining Title Holder and the community;

24. Steering Committee of the CDC

- 24.1.** The CDC will have a Steering Committee, which shall consist of the following members:
 - 24.1.1.** [▼] [maybe add a note describing generally the types of members a solid committee would have, or in the alternative leave – in brackets – to insert names of appointees / position titles]
- 24.2.** The functions of the Steering Committee shall:
 - 24.2.1.** Provide oversight of the Agreement’s activities including its operations, control, monitoring and evaluation;

- 24.2.2.** Manage resources owned by the Agreement (facilities, equipment, machinery and funds);
 - 24.2.3.** Receive, appraise, select, monitor and evaluate all project proposals from the mining communities;
 - 24.2.4.** Make the final decision for the award of contracts for services to be delivered under this Agreement;
 - 24.2.5.** Provide guidance for those directly involved in the projects on project planning, implementation and management;
 - 24.2.6.** Address any issue that has major implications for the project;
 - 24.2.7.** Organize meetings for [▼] and the local communities to discuss pertinent issues relating to their welfare;
 - 24.2.8.** In concert with [▼], solicit funding both internally and externally for the operation of the Agreement;
- 24.3.** The Chairman, Vice Chairman and Secretary of the General Assembly shall be the Chairman, Vice Chairman and Secretary of the Steering Committee respectively.
- 24.4.** Duration of membership of the Steering Committee shall be the same as that of the General Assembly.
- 24.5.** Meetings of the Steering Committee:
- 24.5.1.** The Steering Committee shall meet once every quarter, in the last week of the quarter.
 - 24.5.2.** The Chairman shall cause proper notification to all members concerned of all Steering Committee or CDC meetings. Such notification shall be made, at least, ten days ahead of the scheduled meeting, giving time and place of the meeting. In the event the Chairman fails to call a meeting at a particular time, the Vice Chairman with the support of two-thirds (2/3) of the membership can call a meeting.
 - 24.5.3.** The quorum necessary for the transaction of the business of the Steering Committee or CDC be 2/3 (two-thirds) of the entire membership in each case.

25. Allowance for Members of Steering Committee

For every sitting of the Steering Committee, each member shall be entitled to sitting allowance, as shall be approved by the CDC.

Part IV: Funds for Community Development Projects

26. Funds for Community Development Projects

The funds for the implementation of this agreement shall be derived from the following sources:

26.1. Funds provided as part of the Mineral Holder's community development obligations under section **[INSERT RELEVANT LAW]**;

26.2. Any other funds that may be payable to the community in accordance with any Mining Title and/or the Applicable Laws.

27. Management of Funds

Of the total amount required to be paid by the Mining Title Holder ten percent (10%) shall be expended solely on administrative costs for the implementation of the agreement while the remaining ninety percent (90%) shall be utilized exclusively for the implementation of community development projects and ancillary matters.

28. CDA Account

A current account shall be opened in the name of the Community Development Agreement Fund at any domestic? commercial bank registered in **[INSERT COUNTRY]**.

29. Withdrawal of Funds

29.1. The Chairman of the Steering Committee shall approve all payments before cheques are signed and issued.

29.2. The withdrawal of funds and the making of payments shall require the signatures as set out in schedule [▼] of this document.

29.3. The Steering Committee shall advise the signatories when payments are to be made and provide the necessary documentation in support of that advice.

30. Accounting for Funds

- 30.1.** The Treasurer shall present audited financial statements, signed by all members of the Steering Committee, to the CDC and the **[INSERT LOCAL AUTHORITY]** within 30 days of the end of every financial year.
- 30.2.** The Treasurer shall publish within the **[▼]** Community all audited and signed financial statements within the framework of this Agreement;
- 30.3.** All construction projects and equipment purchased through this Agreement must be clearly marked as items paid for by Community Development Agreement Funds.
- 30.4.** The chairperson of the Steering Committee shall submit to the Local Councils of the **[▼]** Community a copy of the audited and signed financial statements.

31. Audit

- 31.1.** The Chairman of the Steering Committee shall cause the financial statements of the Community Development Agreement to be audited by a reputable audit firm agreed upon by the Parties at the end of every financial year.
- 31.2.** The audit firm shall present their report to the Committee at their first meeting in the following year, and submit a copy of the report to the **[INSERT LOCAL AUTHORITY]** and the Mining Title Holder.

32. Reporting Annual

32.1. The Secretariat of the Steering Committee shall prepare an annual report at the last CDC meeting for the financial year under review. Such report shall be disseminated and shall be read in the CDC meeting in the language understood by all members.

32.2. The Annual Report shall include but not be limited to:

32.2.1. Itemized budget and related expenditure;

32.2.2. Progress made under existing or completed projects;

32.2.3. Meeting dates, times, location and minutes of meetings;

32.2.4. Lists of CDC Members.

33. Quarterly Reports

33.1. The Secretariat of the Steering Committee shall present quarterly written and oral reports to the Committee ensuring that oral reports are presented in languages understood by all members.

Part V: Miscellaneous

34. Conflict Resolution

34.1. There is hereby established a Conflict Resolution Committee.

34.2. The Conflict Resolution Committee shall mediate disputes regarding this agreement, which have arisen between the Mining Title Holder and the Community, or within the Community and which have remained unresolved for a period of sixty (60) days from the date when either Party notified the other Party of the dispute.

34.3. If the Conflict Resolution Committee is unable to resolve a conflict, it shall be referred to arbitration in terms of the relevant arbitration laws. The decision of the Minister shall be final and binding on the Parties.

35. Monitoring and Evaluation

35.1. The Steering Committee shall develop a work plan and a log frame for projects to be implemented under this agreement, which shall contain indicators agreed upon by the Parties to serve as the basis for the monitoring and evaluation of progress made in the implementation of such projects.

35.2. The Community Development Agreement Annual Expenditure Report shall be subject to verification and evaluation by the [▼].

35.3. The [▼] shall monitor and evaluate the implementation of the Community Development Agreement.

36. Breach

36.1. If any Party (the “**Defaulting Party**”) breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 10 (ten) Business Days of receipt of written notice from any other Party (the “**Non-Defaulting Party**”) requiring it to do so, then the Non-Defaulting Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the Non-Defaulting Party’s right to claim damages.

37. Domicilium Citandi et Executandi

37.1. The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

37.1.1. [▼]

Physical: [▼]
 Postal: [▼]
 Electronic mail: [▼]
 Attention: [▼]

37.1.2. [▼]

Physical: [▼]
 Postal: [▼]
 Electronic mail: [▼]
 Attention: [▼]

37.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by electronic mail.

37.3. Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the **[[▼] – insert country]** or its postal address or electronic mail provided that the change shall become effective on the 7th (seventh) Business Day from the deemed receipt of the notice by the other Party.

37.4. Any notice to a Party:

37.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 4th (fourth) Business Day after posting (unless the contrary is proved);

37.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

37.4.3. sent by electronic mail to its chosen electronic mail address stipulated in clause 37.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

37.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

37.6. *[NOTICE MUST BE MADE IN ACCORDANCE WITH THE APPLICABLE LAW]*

38. Governing Law

The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of the [▼].

39. Whole Agreement, no Amendment, General

39.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.

39.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, or

other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 39.3.** No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 39.4.** To the extent permissible by law no Party shall be bound by any express or implied term, representation, to, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 39.5.** In the event of any provisions of this Agreement being invalid, such provision/s shall be regarded as severable from the remainder of the agreement, which shall remain of full force and effect.
- 39.6.** This Agreement will inure for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or any of them.
- 39.7.** Each of the Parties acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the Parties acknowledge that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties.

40. Legal Costs

The Mining Title Holder shall bear the costs of and incidental to the preparation of this Agreement (including prior drafts and consultations).

41. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all of which shall constitute one and the same instrument.

[▼] COMMUNITY

Signature:

who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

Witness:

Witness:

[MINING TITLE HOLDER]

Signature:

who warrants that he / she is duly authorised thereto

Name:

Date:

Place:

Witness:

Witness:

Annexure A: Community Resolution/Written authority

Annexure B: Mining Title Holder Resolution

Annexure C: Deed of Adherence

DEED OF ADHERENCE

- 1 Capitalised terms in this deed of adherence (the “**Deed**”) shall (except where the context otherwise requires) bear the meanings ascribed thereto in the Community Development Agreement entered into amongst the Community and the Mining Title Holder on or about [▼].
- 2 **[[insert new Party’s name]**, registration number **[insert]**, a **[insert legal description of new Party]**], hereby, with effect from the date of signature of this Deed binds itself to all the terms and conditions of the Community Development Agreement.
- 3 For the purposes of clause 37 of the Community Development Agreement, **[[insert new Party’s name]** chooses as its *domicilium citandi et executandi* for all purposes in connection with the Community Development Agreement the following address –

[▼]

Signed at on 202[▼]

[insert]

Duly Authorised

Annexure D: Projects for Implementation

[General Note: the information below must be populated in respect of each project agreed to by the Parties]

Project Name	The name of the project: e.g. Building of houses		Classification of project e.g. Infrastructure				
Background	<ul style="list-style-type: none"> · Provide information on the project regarding its relevance to the developmental needs of the area. · Provide the stage that the project is at the time of identification e. g. new project at the initial stages or extension of a project or resuscitation of a potential that was not well managed 						
Geographical location of project	District Municipality	Local Municipality	Village name	Project Start Date		Project End Date	
Output	Key Performance Area	Key Performance Indicator	Responsible entity (inclusive of all role players)	Quarterly timelines and year	Quarterly timelines and year	Quarterly timelines and year	Budget
Classification of jobs	N° of jobs to be create	Male Adults	Female Adults	Male Youth	Female Youth	Total	Comments
Short Term							
Medium Term							
Long Term							
Completion date and exit strategy NB: Beneficiaries should be outlined.							

Annexure E: Model Community Development Plan

[Mining Company]

[Registration No.]

[Community Name/ Community Names]

[GENERAL DRAFTING NOTE:

- 1. This Model Community Development Plan is a guideline based on comparative regulatory frameworks and best international practice. The contents of the Model Community Development Plan should be guided by the requirements of the applicable legislative framework of the host country. In practice Community Development Plans will include details that reflect the unique circumstances of each country, the prevailing legislation and community needs. This Community Development Plan should thus be tailored to the circumstances.*
- 2. This Model Community Development should be used in conjunction with the Toolkit on Local Development & Community Engagement In Mining Projects for the African Mining Legislation Atlas.]*

African Mining Legislation Atlas (AMLA)

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Contents of a Community Development Plan

1. Project Background

1.1. This section of the Community Development Plan (“CDP”) should outline the background information on the following aspects:

1.1.1. name of the mining company;

1.1.2. name of the mining project and brief description of the project. This should include the mineral commodities to be mined and anticipated life of mine;

1.1.3. objectives of the CDP – this should highlight the key objectives of the CDP, which would include, amongst others, the promotion of employment; training and skills development; infrastructure development within the host community;

1.1.4. geographical location of the mine;

1.1.5. details of the mining company’s representative; and

1.1.6. contact details of the mine including telephone numbers and physical address.

2. Applicable Laws and Standards

This section of the CDP should briefly discuss the host country’s laws that apply to community development.

3. Stakeholder Engagement

- 3.1.** Stakeholder engagement is key to the success of a CDP and for ensuring that programmes included in the CDP will be beneficial to the host community. It is therefore imperative to include details regarding stakeholder engagement. The detail will be guided by the prevailing legislation and must be considered with reference to the Toolkit on Local Development and Community Engagement in Mining Projects, to which this plan is an attachment.
- 3.2.** Where there are multiple affected mine communities, the stakeholder engagement process should be inclusive with a view to establishing a profile of each community. The profile should include information on the demography; economic conditions; political structures, including traditional structures and other relevant factors.
- 3.3.** The stakeholder engagement section should address the following issues:
- 3.3.1.** stakeholder identification – details of the key stakeholders in relation to the CDP, this includes the affected community; landowners or occupiers; traditional authorities; key government authorities; and community based organisations. Where there are multiple affected mine communities, this should be reflected in the CDP;
 - 3.3.2.** description of the process of engagement – this includes methods of communication (meetings, information brochures); information provided to the stakeholders; and grievance procedures;
 - 3.3.3.** details of concerns raised by key stakeholders should be noted in the CDP; and
 - 3.3.4.** minutes of meetings, notes, attendance registers, information brochures to be annexed to the CDP.

4. Human Resources Development Programme

4.1. This aspect of the CDP must be guided by the developmental objectives of the host country and local territories where the mining project will be located as well as the findings of the needs assessments to be conducted by the Mining Company. The purpose of this programme is to, amongst others:

4.1.1. promote the development of key skills through various training and scholarship initiatives;

4.1.2. contribute towards the employment of members of the host community.

4.2. The human resources development programme must align with the applicable skills development legislation, if any and be reviewed every [▼] years in accordance with the requirements of the applicable legislation order to evaluate its success and shortcomings.

4.3. A human resources development programme should include the following:

4.3.1. a skills development plan which identifies and reports on:

4.3.1.1. the number and education levels of the employees or anticipated number and education levels of the workforce;

4.3.1.2. any potential skills gap;

4.3.1.3. the number of vacancies that the mining operation has been unable to fill for a period longer than 12 months despite concerted effort to recruit suitable candidates;

4.3.2. a career progression plan with targets and timeframes

- 4.3.3.** a mentorship plan with targets and timeframes;
- 4.3.4.** an internship and scholarship plan with targets and timeframes. This should be informed by workforce needs of the mining company along with the skills gap identified in the host community.

[Drafting Note: An example of how the abovementioned plans can be reflected in the CDP is outlined in Annexure A hereto]

- 4.3.5.** a plan to promote gender equality within the mining company and to reflect the host country's demographics. The plan should reflect the workforce profile by occupational category and occupational levels;
- 4.3.6.** subject to the applicable mining and labour legislation, processes relating to management of downscaling and retrenchment which must include:
 - 4.3.6.1.** a worker's engagement forum to facilitate discussions relating to potential challenges and solutions in respect of productivity and employment;
 - 4.3.6.2.** mechanisms to save jobs, provide alternative solutions and procedures for creating job security where job losses cannot be avoided;
 - 4.3.6.3.** management of retrenchments in accordance with prevailing employment legislation of the country;
 - 4.3.6.4.** mechanisms to ameliorate the social and economic impact on individuals, regions and economies where retrenchment or closure of the mine is certain. This mechanisms include, amongst others:
 - 4.3.6.4.1.** the cessation of recruitment of new employees
 - 4.3.6.4.2.** compulsory early retirement;
 - 4.3.6.4.3.** voluntary separation;
 - 4.3.6.4.4.** alternative employment in other mining companies;
 - 4.3.6.4.5.** working on off-days.

4.3.7. Employees Skills Plan which addresses the following:

- 4.3.7.1.** how the company intends to attract and retain successful and professional employees, including how the company recruits or retains local employees (skilled and unskilled);
- 4.3.7.2.** how the company intends to implement skills transfer, train, and develop employees to their full potential. *[Drafting Note: This can be done through encouraging employees to further their studies with recognized and accredited academic institutions];*
- 4.3.7.3.** how the company intends to develop employees in accordance with their specific needs and the needs of the company;

5. Mine Community Economic Development Programme

5.1. This aspect of the CDP should seek to substantially empower the host community; minimize post closure socio-economic impacts and the creation of alternative economies, and leaving a positive social legacy.

5.2. A mine economic development programme should include:

- 5.2.1.** the social and economic background of the area in which the mine operates. This includes:
 - 5.2.1.1.** the demographic profile of the community;
 - 5.2.1.2.** household sizes;

- 5.2.1.3. access to basic services;
- 5.2.1.4. education levels;
- 5.2.1.5. employment;
- 5.2.2. the key economic activities of the area in which the mine operates
- 5.2.3. the negative and positive impacts that the mine will have in the local communities. Examples of negative impacts include the need to relocate the community; exhumation of graves;
- 5.2.4. the infrastructure and poverty eradication projects that the mine will support in line with critical national, provincial and municipal development priorities;
- 5.2.5. having identified the needs of the community, the mining company must identify projects that will be implemented in line with these needs. This must be accompanied by an implementation plan and timeframes *[Drafting Note: An example of a project implementation plan is outlined in Annexure B hereto]*;

6. Procurement of Local Goods and Services Programme

- 6.1. Procurement of local goods and services will be informed by the regulatory requirements. The purpose of this section of the CDP is to promote the procurement of local goods and services by the mining company. The CDP should address the following:
 - 6.1.1. list of goods and services required by the mine to determine goods and services which can be procured locally;
 - 6.1.2. list of goods and services to be procured locally;

- 6.1.3. list of goods which cannot be procured locally. For these goods, there should be targets and timeframes for the local procurement thereof;
- 6.1.4. criteria for awarding contracts to local business;
- 6.1.5. identification of pre-qualified local businesses capable of providing goods and services to the mine *[Drafting Note: the mining company may seek to maintain a list of local businesses that are capable of providing goods and services to the mine];*
- 6.1.6. business opportunities awareness workshops to be undertaken by the mining company; and
- 6.1.7. business opportunities identified through the stakeholder engagement process which the mining company will implement.

7. Enterprise Development Programme

- 7.1. This section of the CDP is focused on building sustainable livelihoods in the host communities. The programme should assist emerging entrepreneurs to enter the formal sector and should address the following, amongst others:
 - 7.1.1. mentorship and training of small, medium and micro enterprises (“SMME”);
 - 7.1.2. the establishment of enterprise development centre(s) where necessary;
 - 7.1.3. SMME Fund to provide funding and support entrepreneurs in the host communities.

8. Community Infrastructure Development Programme

8.1. This section of the CDP should identify infrastructure projects (in order of priority) to be implemented by the mining company for the benefit of the host community. The infrastructure development programme must be driven by local economic development plans and direct engagement with community structures.

8.2. The infrastructure development programme should address the following basic infrastructure needs:

8.2.1. water and sanitation;

8.2.2. roads;

8.2.3. schools;

8.2.4. Health centres, hospitals?

8.2.5. Electricity

8.2.6. community centres.

9. Monitoring and Evaluation

- 9.1.** A CDP monitoring and evaluation committee mechanism should be established to assess the progress of the CDP against the contemplated targets and timeframes. The committee should comprise of representatives of the mining company; and the host community.
- 9.2.** The monitoring committee should meet on a regular basis to measure progress.

10. Financial Provision

- 10.1.** The mining company must outline the amounts that will be committed towards the implementation of this CDP. All projects to be implemented in terms of the CDP must be financially provided for.
- 10.2.** An example of this is reflected in Annexure C below.

Annexure A: Human Resource Development Programme Plans

Career Progression Plan

Training programmes within career progression paths	Core mining occupations	Position starting from	Current training intervention	Target position working towards	Year 1	Year 2	Year 3	Year 4	Year 5
					N° of identified employees				

Bursary Plan

Bursary field	Targets and timelines <i>Note: this is only a guide. The plan should have the actual calendar timelines.</i>					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total budget
Total number						
Budget						

Annexure B: Project Implementation Plan

Project Name	The name of the project: e.g. Building of houses			Classification of project e.g. Infrastructure			
Background	<ul style="list-style-type: none"> · Provide information on the project regarding its relevance to the developmental needs of the area. · Provide the stage that the project is at the time of identification e. g. new project at the initial stages or extension of a project or resuscitation of a potential that was not well managed 						
Geographical location of project	District Municipality	Local Municipality	Village name	Project Start Date		Project End Date	
Output	Key Performance Area	Key Performance Indicator	Responsible entity (inclusive of all role players)	Quarterly timelines and year	Quarterly timelines and year	Quarterly timelines and year	Budget
Classification of jobs	N° of jobs to be create	Male Adults	Female Adults	Male Youth	Female Youth	Total	Comments
Short Term							
Medium Term							
Long Term							
Completion date and exit strategy NB: Beneficiaries should be outlined.							

Annexure C: Financial Provision

Description	Time Period		
	Year 1	Year 2	Year 3
Human Resources Development Programme			
Mine Community Economic Development Programme			
Procurement of Local Goods and Services Programme			
Enterprise Development Programme			
Community Infrastructure Development Programme			
Total			

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