

**Expert Meeting - Mining Community  
Development Agreements**

**Problems and Issues to  
Overcome**

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***Luke Danielson***

***Sustainable Development Strategies Group***

***www.SDSG.org***

# THE OBJECTIVE (1)

The objective seems clear – to meet the need of humans for natural resources in ways that are consistent with principles of sustainable development, which include these:

- Ensuring that the impacts of production do not reduce the flow of ecosystem benefits to the most impacted people and communities; and
- Ensuring that the most impacted people and communities achieve development benefits from resource extraction

# THE OBJECTIVE (2)

- The process will not work if the objective is seen as landing material benefits on people. A cell phone tower or a refrigerator is not development.
- **More and better options for the future, and more power to define and choose the future path need to be the goal. Amartya Sen, *Development as Freedom.***

# ROLES AND RESPONSIBILITIES

- What is the role of national government?
- What is the role of local government?
- What is the role of resource companies?

# NATIONAL GOVERNMENT – A TRADITIONAL VIEW

- One traditional view of the development process is that since minerals belong to the central state, the fundamental way that they can be used for development is through payment of taxes by the developer to the national government.
- The national government then uses these revenues to promote development. The national government decides whether there is a local share, how much that local share is, and what it is spent on.
- The area where the project is located has no special call on these tax resources.

# WHY HAS THIS VIEW BEEN ABANDONED?

**This view has largely been abandoned, because it simply does not work:**

- It presumes that there are tax revenues, when too often there are not;
- It presumes that revenues come at a time that matters, when they almost never do;
- It ignores the important reasons why impacted communities actually do have a 'special right' or call on some of the revenue;
- Resource companies generally hate it; and
- It is a key cause of violence, conflict, and project failure.

# THE NATIONAL ROLE

- National government plays an extremely important role in development. Resource production must be good for national governments, and support national development.
- But the idea that impacted local communities can be sacrificed for the ‘greater good’ of the nation state is inconsistent with sustainable development.
- Both have to benefit and advance; the precise formula for sharing benefits between national government and impacted regions has to be worked out in each case.
- Guidance in this area is really vague. The Resource Charter (P12) says no more than that there should be “engagement with governments and communities to ensure the delivery of benefits...”

# A MODEL OF NATIONAL – LOCAL SHARING

- Adjusting the balance between national ownership and control of resources and the local claim to a share may be the most critical issue in turning resources into sustainable development
- But the great economic thinkers seem to say almost nothing useful about it.
- Increasing local control over the terms of development may be the most critical element in keeping resource development within ecosystem limits – few are likely to make their own back yards into ecological ‘sacrifice zones.’

# NATIONAL – LOCAL TENSIONS

- May be at their most difficult where there are racial, ethnic, cultural or historic differences between those who dominate national government and local populations.
- Grasberg , Darfur, Ogoniland, Aceh....
- “If they get any revenues, they will use them to buy arms and secede.”
- Even where it is managed peacefully through the political process, tension between central governments on one hand and provinces, states, regions and communities on the other is a fact of life.
- Community Development Agreements are useful where they help manage these tensions

# WHAT IS THE NATIONAL ROLE IN CDAs?

- CDAs required by national law in some circumstances? Prohibited?
- Contents of CDAs prescribed by national law?
- Is spending on CDAs deductible from national taxes, or credited against other obligations to national government?
- Where projects change ownership, are CDAs binding on “successors and assigns?” Is it national government’s role to ensure this is so?
- Is a company’s failure to honor a CDA a violation of its agreement with national government?
- Model Mine Development Agreement, [www.mmdaproject.org](http://www.mmdaproject.org)

# COUNTRIES WITH CDA POLICIES OR REGULATIONS

## ➤ **Sierra Leone**

- Sierra Leone Mines and Minerals Act 2009, Part XVI-Community Development

## ➤ **Ghana**

- Ghana Minerals and Mining Act 2006, Section 73(1) and Section 73(3)

## ➤ **South Africa**

- Mineral and Petroleum Resources Development Act 2002

## ➤ **Canada**

- Nunavut Land Claims Agreement and the Inuvialuit Final Agreement

## ➤ **Australia**

- Native Title Act (NTA) and Indigenous Land Use Agreements (ILUA)

# LOCAL CONTROL, LOCAL MANAGEMENT, AND LOCAL BENEFITS

- If there are to be local benefits, they cannot simply be landed on people; there needs to be an ongoing process of participation and management, over decades.
- If there is to be management of impacts on local communities, they have a critical, essential role in identification and management of issues that arise, over the project life.
- This is really at the heart, for example, of IFC's new requirements for project level grievance mechanisms.

# LOCAL GOVERNANCE TODAY: A DRAMATIC RANGE OF POSSIBILITIES

- If there is to be a local role, there needs to be an assessment of the local institutions capable of playing that part.
- In the richest countries, there are sometimes local government bodies with considerable capacity, local planning and zoning requirements, and considerable legal authority to determine outcomes.
- In many cases, none of these things exist.
- **As we try to create mechanisms to fill the voids, we must be sure that we are promoting the development of better and stronger government, rather than creating alternatives to government.**

# THE COMPANY ROLE

- What are resource companies good at? What are they not good at?
- MODEL A: Development through providing money to others?
- Who are the “others” where there is a governance vacuum? Must we create the “others?” Do we know how?
- Are NGOs willing to work with companies to deliver development? On what terms?
- MODEL B: Development through “linkages?” Jobs and job training; backward and forward linkages and capacity building; health and education, transportation, communication and other infrastructure.
- MODEL C: A mixture of money and linkages?

# BUILDING THE CAPACITY TO NEGOTIATE

- Many communities have no experience with large resource development projects and no real ability to make quick and binding decisions about their future.
- Some companies have real problems with “paying them to learn how to ask for more” and see this as an inherent conflict in interests.
- Part of the solution may be a series of agreements, escalating in scope, or periodic renegotiation. But many of the “finance types” are very resistant to “open ended” future costs.
- The community may need time to acquire understanding of its options and the expertise to make durable choices. The “finance types” are often in a hurry, or working under institutional or legal deadlines of limited relevance to the community.

# REVENUE FLOWS AND TIMING

- “Achieving production” may occur only after years of dramatic impact. “Earning income” may come even later. So any revenues based on production or earnings will only start years after massive impacts.
- Revenues based on production or income will often produce wild oscillations depending on commodity prices; this makes planning for development efforts extremely difficult.
- There are often extreme social, economic and environmental impacts at and after closure. Where are the revenues to manage these?
- Where are the funds to come from to build the capacity to negotiate, before any agreement exists?

# TOOLS FOR WHICH COMMUNITIES?

- Inclusion of some communities and exclusion of others is a widely reported source of conflict.
- There has been considerable search for a ‘formula’ that would identify the communities where some kind of agreement should be sought, e.g. the “five kilometer radius.”
- The concern is apparently that if we need to use human judgment, this creates the potential for arbitrary or abusive results
- **The real questions are:**
  - **Is there an impact that requires management?**
  - **Are there development opportunities we should try to take advantage of?**

# Transport Route for the Antamina Mine and the Port of Huarmey

## Antamina Mine



## Town of Huarmey



# Yanacocha Mine in Relationship to Choropampa

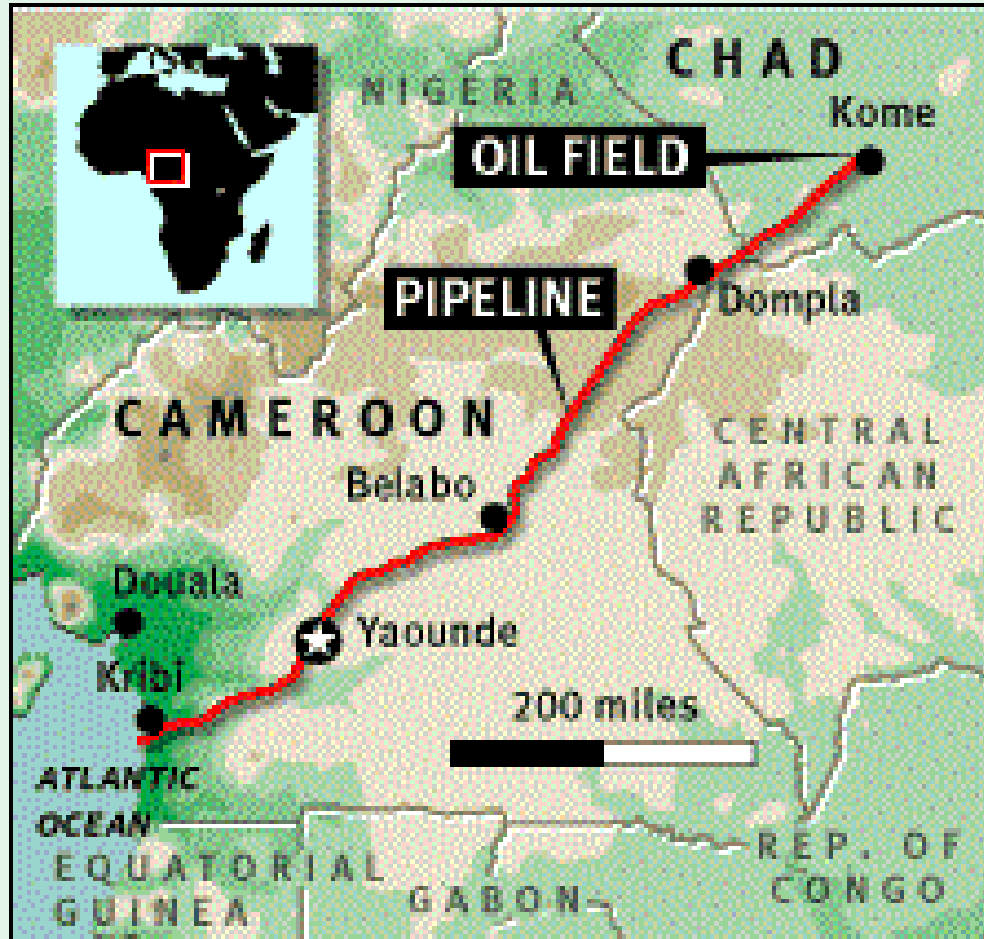


# OK Tedi Downstream Impacts

Downstream Migration of Tailings and  
Flooding in the Fly River from the OK Tedi  
Mine



# The Chad-Cameroon Pipeline



Source: [MSNBC](#)

# STEPS TO A SUCCESSFUL CDA

**MMSD** (<http://pubs.iied.org/pdfs/G00901.pdf?>) in “**Breaking New Ground**” identified three steps to a successful CDA:

1. Company-Community Engagement
2. Integrated Impact-Assessment
  - Social, economic and environmental impacts on the local community
3. Creation of a Community Development Agreement
  - Needs to be evaluated on a case by case basis due to differing characteristics of each community

# PANGUE EXPERIENCE – PEHUEN FOUNDATION

**With all the best of intentions, some very problematic results:**

- “Supporters” included, “opponents” excluded
- “Welfare Handout” approach
- “Friends” rewarded with benefits, “enemies” get nothing
- Company control of decisions leads to human rights abuse allegations
- **See *A Participatory Interim Evaluation of the Pehuen Foundation*, Downing, T., International Finance Corporation, 1996**

[www.ted-downing.com/Publications/Downing Peheun report English.pdf](http://www.ted-downing.com/Publications/Downing%20Peheun%20report%20English.pdf)

# SETTING UP THE STRUCTURE

- Not a “one time deal” but a durable governance mechanism that necessarily evolves over decades
- Limits of company involvement
- Identifying legitimate local leadership
- Renewing leadership over time
- Diversity of involvement
- Vulnerable groups

# DOING CDAs RIGHT

**Requires doing a multiplicity of things well, and keeping some principles in mind:**

- Clear objectives
- Clear workable relationship to national government
- Building and strengthening local government, not an alternative to local government
- CDAs may be appropriate wherever (a) impacts are felt; or (b) opportunities exist for development
- The process should start very early, perhaps with smaller proto-agreements of modest scale at exploration phase
- Legitimacy and inclusivity of local leadership are absolute requirements
- May need to develop long lived foundation structures to ensure ongoing benefits of development

# ISSUES THAT MAY COME UP

- Distribution of Revenue and Use
- Gender Disparities
- Support of Local Businesses
- Employment and Skills Development
- Conflict and Dispute Resolution Mechanisms
- Community Health Initiatives
- Integrated Planning for Mine Closure
- Community Participation in Decision Making
- Social Impact Assessment

# ABOVE ALL

- A need for sharing experience and learning in this area

# THE CDA LIBRARY

Sustainable Development Strategies Group has established a library of community development agreements and materials relevant to how they are negotiated, and the framework within which they exist.

**Please contribute** to the library: [kirsch@sdsq.org](mailto:kirsch@sdsq.org)

Access the library at [www.sdsq.org](http://www.sdsq.org)



**Thank You!**

**Sustainable Development Strategies  
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**[www.SDSG.org](http://www.SDSG.org)**

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