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Research Report

How FDI in the mining sector can assist communities to achieve sustainable development

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Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

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How FDI in the mining sector can assist communities to achieve sustainable development

by
James Otto*

The mine opens and extracts minerals for 25 years. Then it closes, and the site is rehabilitated as required by law. End of story? From the perspective of an international investor, this is often the case—a classic example of the boom-bust cycle associated with large mines. However, the immediate impact of closing a mine can be devastating to local communities, businesses and people that had depended on the project. Acknowledging that closure impacts can be mitigated, governments, extractive companies, civil society, and other stakeholders have developed approaches that target long-term sustainable development. These approaches, which can be contractual, seek to strengthen communities' capacity to develop sustainable economic activities while mines are in operation, and that can be maintained after they close.

Today, governments and industry have a stronger interest than in the past to achieve sustained development in communities affected by large projects. Increasingly, the trend is to move to a standardized, statutory approach to national investment regulation. Several tools are available now to promote immediate and sustainable development around mining projects. These include two complementary approaches: corporate social responsibility (CSR) programs and community development agreements (CDAs).

CSR programs. Large mines have always played a role in local economies—directly, as providers of employment, local procurement and infrastructure; indirectly, through economic multiplier impacts. However, community expectations can be higher than this, and increasingly investors need to earn “a social license to operate” by gaining and maintaining the support of the local population.¹ Most large mines today have voluntary CSR programs, often emphasizing immediate needs—for example, building a school, providing uniforms for the kids' soccer teams or organizing immunization efforts. The strength of CSR programs is that they address immediate needs. However, well-designed CSR programs can, but do not always, address sustainable development, development that will prepare

affected communities for after the operations close. For example, how will teachers in the investor-built schools work and be paid after investors leave?

CDAs. As the name implies, a CDA focusses on development, which may include not only immediate community development, but also sustainable development to prepare communities for post-closure. Some CDAs are legally binding contracts; others take forms that are less enforceable. The parties to such agreements may include affected communities, the investors and possibly governments. Unlike CSR programs (that can be substantially unilateral, but need not be), CDAs are generally bi- or multi-lateral, with the obligations of the signatory parties defined in the agreements. CDAs may be required by statutory law (for example, where the mining law requires all large-scale mines to have a CDA) or created at the discretion of the interested parties. Over 40 jurisdictions now require CDAs for large-mining operations² and more than 50 impose some sort of community development effort.³ To aid governments in mandating CDAs, the World Bank has published an [in-depth source-book on CDAs](#), including [model mining regulations](#) that set out recommended regulatory and CDA content requirements. Following the World Bank's publication, the United Nations published an [updated version](#) of model regulations.⁴ Other organizations have published various best-practice CDA guidance, including on how to address implementation challenges.⁵

For governments that mandate CDAs, statutory law may address such topics as what types of projects are required to have CDAs, parties to agreements, mandatory agreement content, periodic CDA revision, negotiation capacity, agreement approval, alignment with government development plans, how new community members are to be handled, annual minimum expenditure and reporting requirements, penalties, and enforcement.

Although statutory law may set out certain CDA requirements, the specific content of a CDA needs to be tailored to the situation. Typically, a CDA should include the agreement's objectives; beneficiaries; the party managing the agreement; the person or body representing the community; how the community, including marginalized groups, will participate in decision-making processes and implementation; a development program plan; community consultations on mine-closure planning; obligations of the community to the investor; how and when CDAs will be reviewed and updated; consultative and monitoring frameworks; how funds made available under the agreement are disbursed, what accounts must be kept and by whom and reporting and auditing requirements; grievance and dispute-resolution provisions; and the process by which agreements may be modified. These elements are also described in detail in the above-mentioned model CDA regulations.

The use of CSR and CDAs can (and should) play an important role in managing community expectations. They provide a means to achieve sustainable development for mine-dependent communities long after the mine ceases to operate.

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¹ [Anne B. Read, "Defending home: How resistance movements are framed against mineral extraction in Cajamarca and Tambogrande, Peru," *International Development, Community and Environment \(IDCE\)* \(2017\), p. 18.](#)

² [James Otto, "How do we legislate for improved community development?," *WIDER Working Paper 2017/102*, April 2017, pp. 8 and ff.](#)

³ See IISD, Mapping community development requirements in the mining sector [database](#).

⁴ See Otto, *op. cit.*, pp. 19-28.

⁵ See, e.g., [Jennifer Loutit, Jacqueline Mandelbaum and Sam Szoke-Burke, “Emerging practices in community development agreements,” Columbia Center on Sustainable Investment, February 2016.](#)

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