

Mining Community Development Agreements Source Book

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THE WORLD BANK

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List of Acronyms

BTC	Baku-Tblisi-Ceyhan
CDA	Community Development Agreements
CDRF	Capacity Development Results Framework
CMCAs	Community Mine Continuation Agreements
CSR	Corporate Social Responsibility
CSRMI	Centre for Social Responsibility in Mining
ERM	Environmental Resources Management
ESHIA	Environmental, Social, and Health Impact Assessments
FTFs	Foundations, Trusts, and Funds
IBAs	Impact Benefit Agreements
ICMM	International Council on Mining & Metals
IFC	International Finance Corporation
ILUA	Indigenous Land Use Agreement
NADeF	Newmont Ahafo Development Foundation
NGOs	Nongovernmental organizations
O&G	Oil and Gas
PNG	Papua New Guinea
SAFETE	South African Fund for African Energy, Transport, and Extractive Industries
UNDP	United Nations Development Program
WBG	World Bank Group

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Foreword

Recently, there has been a growing interest by government policymakers, civil society, communities, and mining companies on the sustained development of mine-impacted communities as part of the debate around the costs and benefits of mineral development. Communities have become more vocal in expressing their expectations for benefits, while mining companies are concerned about the need and means by which to obtain and maintain their “social license to operate” based on local community support. The World Bank Group (WBG) in cooperation and consultation with other stakeholders has been involved in developing practical approaches that can be adopted by industry, government, and other stakeholders. Examples of this involvement include, but are not limited to, the Equator Principles (lending principles) and a “Community Development Toolkit” (jointly developed and published by the World Bank Group and the International Council on Mining and Metals).

Various other instruments have addressed the challenge of increasing local community benefits. Community Development Agreements (CDA) between companies and impacted communities, for example, have played a valuable role in meeting the expectations and needs of a broad range of stakeholders. They are increasingly considered a key instrument for defining the relationship and obligations of mining companies with impacted communities, including the roles of local and national governments and nongovernmental organizations. However, the absence of a common framework has led to a number of different approaches to CDAs that have had varying outcomes.

Given the current status of CDAs, there is a need to extract from current practice the key building blocks for successful community development. To address this need the World Bank’s Oil, Gas and Mining Unit launched a project to review and analyze the global experience in community development agreements (voluntary or regulated) with the objective to develop a methodology through which the approach to mining community development could be improved and the results measured on the ground.

A consulting firm, Jim Otto (sole proprietor) was commissioned to carry out the assignment. The work on the framework for CDAs was phased, starting with a desktop identification from current practices of the key building blocks to enable appreciable community development. The result of this was the development of draft model CDA regulations. The next phase consisted of a number of internal and external consultations with a broad spectrum of stakeholders (governments, private sector, and civil society organizations). The feedback informed the updating of the draft model CDA regulations and the drafting of guidelines for CDAs. The consultations also indicated that further research and definition of the process and some of the building blocks of a CDA could enhance its usefulness and effectiveness. This led to the commissioning of two additional pieces of work, a field research assignment by ERM to assess the community development practice in three different countries (Argentina, Ghana, and Papua New Guinea) on three continents (Africa, America, and Asia) and to test the robustness of the building blocks identified. In addition

the University of Queensland was approached to conduct additional research to formulate “Good Practice Notes” on the processes and frameworks used to negotiate, structure, and implement CDAs in order to maximize the development outcomes.

This publication presents the results of the analytical work and research conducted by these groups. It is hoped that this Source Book will not only make a contribution to the understanding of mining and community issues but will also have a measurable impact on the ground as an applicable tool. This publication is not intended to be prescriptive, as the development of any CDA should consider the local context, including the applicable regulatory structure(s) specific community/stakeholder interests, values, concerns, and capacity. Since this project and report were prepared as a discussion paper, we would like to thank the participants—government officials, civil society, and private sector representatives—in the various workshops and other consultations for their input, while at the same time we welcome further feedback and comments.

1. Introduction

The World Bank Oil, Gas and Mining Unit, in its capacity as a driver for best practice related to extractive industry contributions to poverty alleviation, has a strong interest in the sustainable development of mine-impacted communities. As part of the growing global expectation that the extractive industry should contribute positively to long-term local development, a discourse has grown surrounding a variety of structures and processes aiming to deliver development benefits to communities affected by mineral resource projects. Examples of these strategies include social/community investment programs, development forums, community-controlled trusts, development funds, and foundations. These strategies may be led by government, the companies, the impacted community, or through collaborative bilateral or multisector partnerships and agreements. They may be a regulatory requirement or negotiated voluntarily in response to mining companies' commitment to corporate social responsibility (CSR) principles.

This document describes some of the main considerations and processes regarding the development and implementation of these strategies, specifically in relation to Community Development Agreements (CDAs).

In the last few years the World Bank Oil, Gas and Mining Unit has worked to analyze CDAs within the mining sector as an instrument for more sustainable and equitable benefits. This includes using CDAs as a tool to enhance community participation and consultation, manage expectations of involved parties, and ultimately maximize pro-poor benefits to impacted communities while helping to establish "social license to operate" for governments and industry.

This process of analysis and research has involved a series of reports by the World Bank and external specialists aiming to provide technical input on the process, case studies, lessons learned, and best practices for CDA development. This report builds on previous studies to deliver a knowledge product on CDA development with the aim of providing specific assistance to the process and delivery of CDAs.

This Source Book has been developed from learnings relating to existing regulations/requirements, past experiences, and case studies, including the following key studies, which are presented in the enclosed CD.

- *Community Development Agreements: Model Regulations and Example Guidelines* (Otto, 2010);
- *Mining Community Development Agreements: Practical Experiences and Field Studies* (ERM, 2010); and
- *World Bank Extractive Industries Sourcebook, Good Practice Notes: Community Development Agreements* (Centre for Social Responsibility in Mining, University of Queensland, 2011).

Box 1.1. CDA building blocks

Previous studies have established an exemplar for the CDA process using a “building block” model with a specific focus on:

- Timeframe and process
- Stakeholder participation
- Capacity of participating stakeholders
- Community identification
- Funding and expenditure requirements
- Obligation and responsibility
- Grievance and dispute resolution mechanisms
- Short-, medium- and long-term development plans
- Accountability and transparency

These building blocks have been used throughout this Source Book as an exemplar structure for CDA development.

These three studies have been the key source of material for this Source Book, and they have been used with full approval of their sponsor (the World Bank, Oil, Gas and Mining Unit). As such they have not been referenced individually throughout the text. Other established standards and tools (including those produced by the World Bank, International Finance Corporation, etc.) have also been considered and are referenced as appropriate.

The development of this Source Book has relied upon the lessons learned in these previous studies. This has involved a series of global stakeholder consultation exercises involving representatives of governments, the private sector, nongovernmental organizations (NGOs), civil society, and development experts. In addition, specific representative case studies have informed the development of this Source Book, including a private-sector-led CDA in Ghana; an analysis of regulated Compensation Agreements in Papua New Guinea (PNG); community relations and benefits in a new “frontier” mining region, Argentina; “Good Neighbor Agreements” in a high-income country, Australia; and indigenous peoples development planning in the oil and gas (O&G) sector in Russia.

This Source Book is structured to mimic a basic process by which a CDA might be developed involving host governments, qualified communities, mining companies, and stakeholder groups. The main focus of this document is to describe the various phases of the CDA development and implementation process, and each chapter concludes with a series of recommended “outputs.” The four key phases are:

1. Stakeholder Engagement (Chapter 3)
2. Capacity Development (Chapter 4)

3. Stakeholder Representation (Chapter 5)
4. Implementation and Feedback Mechanisms (Chapter 6)

The final chapter (Chapter 7) provides information regarding management, budgeting, monitoring, assessment, and sustainability. As the topics in this chapter have been the focus of other publications, the coverage of these subjects does not go into the same detail as in the chapters on the process phases.

It should be noted that this Source Book lays out the process and context for developing a CDA by providing an overview of the key elements or building blocks that can guide the development of CDAs, without developing a prescriptive blueprint framework for universal application.

1.1 Objectives of This Document

The aim of this Source Book is to support strategic and collaborative community development planning by governments, companies, civil society, and communities by presenting a basic framework for CDAs in the context of the mining industry. As stated, this guidance is *not* intended to be prescriptive, as the development of any CDA should consider the local context, including the applicable regulatory structure(s) and specific community/stakeholder interests and capacity.

This document also does not speak to the question of whether CDAs should be mandatory or voluntary. Instead, it recognizes that they are becoming a key component of good practice (especially with respect to mining development in emerging markets); that they can be mutually beneficial to communities, governments, and developers; and that the key parameters of CDAs should be agreed upon to both manage expectation and measure adherence to best practice.

1.1.1 TARGET AUDIENCE

This document is intended to provide guidance to all parties who may be involved in the negotiation, development, implementation, and audit/monitoring of CDAs related to the mining industry, including:

- governments and policymakers;
- companies and the private sector; and
- community members and other elements of civil society.

This document provides a tool for governments and policymakers at all levels, as they strive to support their communities—economically and socially—through the sustainable development of mineral resources. It should inform policymakers of the process and content of best-practice CDAs, allowing improved results from CDA development.

We hope this Source Book will contribute to the growing field of practice related to managing local expectations and enhancing community development outcomes in the mining

industry—actions which are the foundation for best practice, corporate reputation, and risk reduction for business, and key objectives of communities and policymakers. This document also provides a body of knowledge for communities and civil society, as they seek to clarify expectations and entitlements and to build maximise benefits through mining projects in their communities.

2. What Is a CDA?

For governments, companies, and communities seeking to develop a sustainable and mutually beneficial relationship, CDAs can provide a means of strengthening and advancing this relationship. The general vision of a CDA can be broken down into the following two core goals:

1. Improving relationships between companies, communities, governments, civil society, and other stakeholders; and
2. Promoting sustainable and mutually rewarding benefits from mining projects, including pro-poor initiatives and other strategies which may be beyond the immediate scope of impacts for a project.

It should be noted that governments can support community development by ensuring that government revenues derived from mining and exploration activities, through taxes and other fiscal mechanisms, are routed back to the affected communities. This may include a government-led focus on local development initiatives, such as the enhancement of local infrastructure and services, or the transfer of funds for application by local governments and community organizations (see Box 2.1).

The ability of national and local governments to effectively manage and distribute mineral revenues can be a major factor behind the realization of benefits at the local level. When managed well, these revenues can be a significant driver for economic growth, and they can provide funding for social development and poverty reduction. Targeted funding streams and policy interventions can enhance the impact of these revenues on affected communities (see Box 2.2).

Box 2.1. Other names for community development

The following terms are also used to describe various agreements between the extractives industry and communities. However, while these agreements may have similar goals (i.e., to promote community involvement and development benefits), the specific content and detail of each may vary considerably.

- Voluntary Agreements
- Community Development Initiatives
- Partnership Agreements
- Participation Agreements
- Impact Benefit Agreements (IBAs)
- Community Contracts
- Landowner Agreements
- Shared Responsibility Agreements
- Investment Agreements
- Exploration Agreements
- Benefits Sharing Agreements
- Social Trust Funds
- Empowerment Agreements
- Community Joint Ventures

Box 2.2. Government management of mining revenues

The World Bank's Poverty Reduction Strategies identify a number of key information needs related to the design of policy interventions for the mining sector. Questions related to government revenues include:

- Does the government have agreements with mining firms to support local and regional economic development?
- Are processes for collection, management, and distribution of tax revenue from mining fully transparent and understood?
- What share of revenue is directed to the national, regional, and/or local levels?
- Do local government institutions have the capacity to manage revenues?

Source: World Bank, 2002.

2.1 CDA Drivers

Many governments, companies, and host communities have established agreements to enable the realization of the developmental potential of extractive industries at the local level. This trend has been driven by increasingly prominent expectations that extractive industries should contribute positively to the long-term development goals of affected communities and countries. This is further supported by CSR objectives that many companies are developing, implementing, and reporting as part of their broader business and sustainability strategies.

The drivers of the CDA agenda are varied, but primarily include:

- **Emphasis on benefits sharing and equity:** Governments and communities are applying increased pressure on the mining industry to ensure that project benefits are shared with communities, including jobs, infrastructure, and community development.
- **Globalization:** In an age when people have increased access to information and networking, extractive industries and governments are under more scrutiny than ever. Regional, national, and international civil society groups are connecting with communities and are amplifying their voices in the face of real or perceived injustices, including environmental, economic, and social concerns. Negative attention can be focused on extractive projects around the world, and can affect stock prices and the satisfaction of shareholders; therefore many companies are taking steps to avoid this. In addition, in light of the 2008 global economic downturn, governments, companies, and communities are seeking sustainable approaches to community investment that make economic sense and deliver long-term benefits to communities.
- **Demand for accountability:** Pressures on the mining industry have been embodied through demands from shareholders wanting evidence of socially and environmentally responsible practices.
- **Business strategy:** Companies have started to realize the benefits of improved community support for a project, including both risk management and the added value that good stakeholder relations can have for reputation and share prices. Efforts are generally based on industry best practices and guidance from international organizations (see Box 2.3).

Box 2.3. The Ahafo social responsibility agreement

As part of a commitment to economic and social development of impacted communities, Newmont has developed formal agreements with local communities covering the broad roles and responsibilities of different stakeholders, the specific detail surrounding employment and job creation, and the terms of the development of the Newmont Ahafo Development Foundation (NADeF). The Ahafo CDAs took approximately three years to develop and involved the signatories of Newmont Ghana, local traditional leaders from at least ten villages. As a precursor to the commencement of CDA negotiations Newmont practiced a period of stakeholder engagement and capacity building aimed at disseminating information about Newmont, the aims of the forum and negotiations, and improving technical skills in topics such as land ownership legislation and negotiating techniques.

- **Regulatory requirements:** National legislation and regulatory requirements for CDAs have been among the strongest drivers for CDA practices, although the existence and content of these requirements are not consistent.

In some countries—such as Papua New Guinea, Chile, and South Africa—the expectation for CDA (see Box 2.1 for other common names) development has been introduced in national regulation, requiring companies to go beyond the mitigation of adverse impacts and to engage local governments and communities regarding the delivery of social and economic benefits. In others, such as Canada, CDAs are expected as best (and common) practice, especially with indigenous communities, although they may not be formally required. In many others, they are not required at all; overall, there is little consistency in approach.

The very process of negotiating and developing an agreement can be one of the benefits, as it can help communities to build their capacity for negotiation and agreement making, as well as their knowledge about the mining industry; it also builds the relationships between the various players and establishes trust and respect. One of the outcomes of the workshops and research leading up to this report was the conclusion that the “process is as important as the product,” as the process provides a framework for ongoing and future dialogue and partnership.

Table 2.1 summarizes these and some of the other benefits associated with CDAs.

In addition to the importance of the CDA negotiation *process* (noted above), the very *nature* of an agreement is also one of the most substantial benefits that the CDA process can deliver. The measurable nature of CDAs as a development tool, and the delineation of clear objectives, methods, and a review process, allows the tracking and measurement of development against established and mutually agreed criteria. This process should be recognized as a crucial benefit of CDAs. In an increasingly complex development context, these agreements allow an opportunity for comparative clarity in relation to development goals and achievements, as well as stakeholder cooperation and partnership.

Table 2.1. Benefits of community development agreements

Clarity and Transparency
<ul style="list-style-type: none">• Establishing a framework for the relationship between the company and community.• Specifying where benefits will be directed and how they will be allocated.• Helping all parties to clarify and manage expectations, and establishing a transparent and participatory framework with measurable outcomes.• Clarifying roles and responsibilities of various parties, including communities, government, and mining companies.• Increased transparency and accountability on behalf of the mining industry.
Engagement
<ul style="list-style-type: none">• Increased participation of community members, government, and other stakeholders in the determination of how benefits will be managed and implemented.• Enhancing consultation and dialogue regarding local development goals, and helping communities articulate their goals and strategize how to achieve them.• Establishing a framework for engagement over the life of the project.• Helping to build trust and respect between industry and communities, as well as between various stakeholder groups.
Capacity Development
<ul style="list-style-type: none">• Identifying capacity building needs, e.g., through a capacity needs assessment.• Helping communities to build their capacity for negotiation, agreement-making, and project planning and implementation.• Helping communities understand the mining industry and the constraints under which developers operate.• Maximise benefits to communities.
Business Best Practices
<ul style="list-style-type: none">• Helping mining companies meet their CSR standards (internal and external).• Helping mining companies obtain their social license to operate.• Improving project design and implementation through local knowledge and ideas.
Sustainability
<ul style="list-style-type: none">• Facilitating the collection of data, results measurement, and the reporting of change over time.• Sharing responsibilities for program delivery and outcomes through joint ownership of community development programs.• “Locking in” all parties to long-term objectives and commitments, even through potential changes in ownership and personnel.• Reducing risk and improving certainty for all parties in terms of expectations, obligations, and goals.• Establishing a framework for the allocation of benefits throughout the life of the project.

However, in addition to the benefits described above, there are also actual or perceived potential risks associated with the creation of formal development agreements, such as:

- Requiring communities to enter into formal agreements can foster a counterproductive environment of mistrust and uncertainty if parties lack commitment to or understanding of the process.
- Potential perceptions that a community or group has been misled or coerced into signing a deal, or that a “backroom deal” has been brokered with one or more parties to the detriment of others.
- Formal agreements, and the legal stipulations that they often include, can lead to an interpretation of compliance that results in a minimalistic approach.
- If lacking clearly defined roles and objectives, a CDA may appear to compensate/fulfil/duplicate the role of government, and could lead to a dependency on the mining company beyond the intended scope.

There may also be other implications including CDA potentially impacting:

- Access to courts and government regulators.
- Communities capacities to pursue outreach strategies.
- National government allocations of resources to communities, etc.

There are also ways to avoid or mitigate the potential risks involved with CDAs. The monitoring and grievance mechanisms may be used to assess potentials risks in order to design appropriate corrective measures.

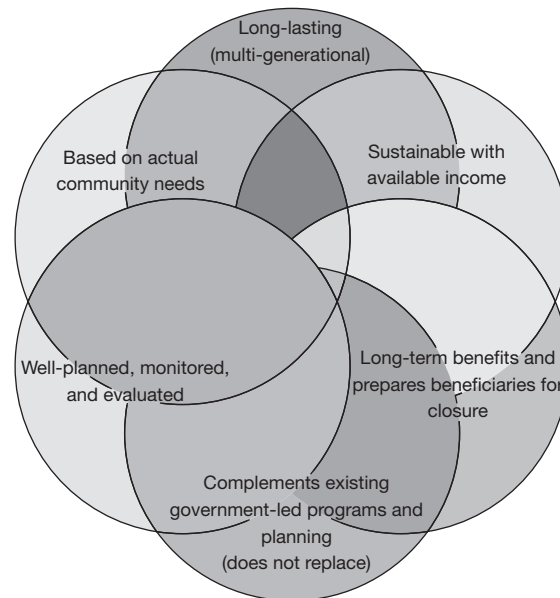
The IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements of March 2010 (www.ibacommunitytoolkit.ca) provide information on negotiating and implementing impact and benefit agreements.

2.2 When and Why Should CDAs Be Developed?

CDAs may be developed for a variety of reasons, but most commonly for the following three scenarios:

- Where government regulations specifically require developers to enter into a formal agreement (e.g., as in Papua New Guinea and Mongolia);
- Where indigenous lands are present and there is a legal requirement to negotiate the conditions of access/use with the traditional landowners (e.g., as in Canada and Australia); and
- Where there have been conflicts between a developer and local communities, and the developer has voluntarily negotiated an agreement in an effort to resolve these conflicts.

Figure 2.1. Core principles for CDA development



Source: Derived from Bocoum and Otto (2010).

However, as CDAs are increasingly seen as a mechanism of best practice in terms of CSR, there have also been examples of mining companies voluntarily establishing agreements in the absence of these scenarios. As stated, the advantages of CDAs (including both the agreement itself and the process of its negotiation) are numerous, including the opportunity to establish better relations with affected communities and other stakeholders; to tie together engagement initiatives and bring multiple stakeholder groups to the negotiating table; to define common priorities and mutually beneficial objectives; and to define the roles and responsibilities of various stakeholders, over the project life, in a way that enables capacity growth and maximizes program effectiveness.

2.3 What Is a Successful CDA?

Reviews of past experiences of CDAs have proven that a number of common characteristics are associated with those that are generally believed to be “successful,” meaning that they have achieved a stable base of local support for the project and have contributed to local economic and social development. Figure 2.1 illustrates six of the core principles that may guide the development of any CDA. An agreement that can, in the end, be described by these principles would be well-placed for success.

At a finer level of detail, a series of key “building blocks” of successful CDAs have also been identified, including both content- and process-related factors (Table 2.2). These building blocks, and the core principles described above, also fit with the central tenets of community driven development.

Table 2.2. Building blocks of community development agreements

Responsibilities and Obligations
<ul style="list-style-type: none">• Many communities and stakeholders believe that mining companies have an obligation to support community development in the areas they are working in, and that the development of a CDA is a potential tool to fulfil this obligation.• Agreements should clearly describe the roles, responsibilities, and expected behaviors of signatories.• CDAs should consider the roles of government and civil society, and take care not to duplicate or undermine existing services/programs/planning, or create dependencies on the proponent for basic services.• Community development activities go beyond mitigation and focus on long-term development and capacity building. Thus, community development activities should be clearly distinguished from any activities which are specifically intended to avoid/mitigate the adverse impacts of a project.• The relationship between the company and communities/stakeholders should be based, from the beginning, on mutual respect, understanding, and management of expectations.
Timeframe and Process
<ul style="list-style-type: none">• Early planning and engagement is critical to a successful CDA. Preparatory processes and engagement should begin prior to mine development (e.g., exploration).• It can take a long time, and a high degree of investment, to develop a CDA.• Although full commitment to budgetary expenses and longer-term programs may not be possible at early stages, the inclusion of “potential to withdraw” clauses can help manage risk and stakeholder expectations.• By beginning CDA discussions/negotiations early, funding priorities can be included in budgeting for broader mine design and development.• Closure planning should be built into discussions from the beginning, as should schedules for ongoing monitoring and evaluation, and reporting.• The process is as important as the product! The process establishes trust between parties and builds a sustainable relationship between the proponent and the community; this often outweighs any concrete development benefits.
Identification of Qualified Communities
<ul style="list-style-type: none">• Stakeholder mapping exercises can help inform the definition of qualified communities. If available, the outcomes of Environmental, Social, and Health Impact Assessments (ESHIAs) may also inform the process.• The identification of “qualified” communities (i.e., those to be included in the CDA negotiation and implementation process) should go beyond the direct project footprint. Those impacted by “transportation routes, supply chains, employment catchment areas, and the use of areas by people from outside the immediate area (e.g., cultural/traditional land use areas) may be interested stakeholders but they will not necessarily be considered” qualified communities under a CDA.• Stakeholder groups at all levels (local, regional, national, international) should be considered, including government institutions, NGOs, etc. Potentially marginalized and vulnerable groups should also be identified and included.• The use of arbitrary geographical boundaries to identify beneficiary communities is not sufficient, and is unlikely to be accepted by communities and stakeholder groups. The process of determining beneficiary communities should be participatory, and should consider geographic, social, economic, and cultural perspectives.

(continued)

Table 2.2. Continued

Stakeholder Participation and Engagement
<ul style="list-style-type: none">• Involving stakeholders (including local government and NGOs) in the identification of their community needs will build local ownership of CDA components and outcomes. It can also ensure effective links to existing programs and development processes.• Many successful CDAs are administered by a community foundation or development forum, which is administered by representatives from qualified communities and stakeholder groups.• Efforts should be made to engage all stakeholder groups (including gender equity, and representatives of vulnerable and marginalized groups, who may otherwise not have a voice in the process). In some cases, it may be necessary to consult with certain stakeholder groups independently—for instance, in some countries, women may be discouraged from being vocal participants of mixed gender meetings, so women only consultations may be required for their meaningful participation.• Meaningful, two-way engagement is a requirement for building trust. The development of a CDA requires all parties to listen to each other, rather than simply make demands or be limited to predetermined outcomes.
Stakeholder Capacity
<ul style="list-style-type: none">• A lack of local capacity is often a challenge with respect to CDA development and engagement, undermining the process and weakening the ability of stakeholders, where applicable, to effectively participate in program design and implementation. Capacities that may be lacking include financial management, administration, governance, and long-term development planning.• The most successful CDAs often result where governments and the private sector have invested significant time and effort into building the capacity of all stakeholders prior to the start of CDA negotiations.• A participatory needs assessment can also help build local capacity for negotiating, planning, and strategizing, as well as promote local ownership and buy-in of the capacity development program approach and objectives.
Funding and Expenditure Requirements
<ul style="list-style-type: none">• The criteria for the management and allocation of funds should be clearly established in any agreement. It is advisable that governments and the private sector make provisions for community development funding.• There are a number of possible approaches to the provision of funding to support the CDA development process. Some countries require that a percentage of profits go to community development, others institute a tax or royalties, while others rely on voluntary contributions.• The CDA negotiation process should also establish, early on, how funding or other benefits will be allocated between parties (e.g., various levels of government, civil society, etc.), and how decisions will be made.• Making monetary payments directly to government is not always the best approach, even wrong in some instances as these funds may be diverted away from community development for qualified communities, thus defeating the intention of the agreement.

Table 2.2. Continued

Grievance and Dispute Resolution Mechanisms
<ul style="list-style-type: none">• An effective grievance mechanism is a key component of a successful CDA, and requires adequate funding.• Where appropriate, mechanisms should involve local leadership/institutions (e.g., traditional leadership bodies, local/regional councils, etc.)• One approach, exemplified by the Ahafo Project in Ghana, is to establish a “complaints resolution committee” to involve community representatives in the resolution process.• Grievance and dispute resolution mechanisms should be implemented early in the CDA development process, should be fair and transparent, and should ensure feedback to any concerns that are raised.
Reporting, Accountability, and Transparency
<ul style="list-style-type: none">• A successful CDA will support transparency, particularly with respect to the allocation and spending of funding, royalties, etc.• Provisions can be built into agreements to ensure that funding goes to priority areas (which could include key infrastructure and service needs, maintenance, etc.).• Monitoring programs should be included in the CDA development process, and should involve representatives of various stakeholder groups. For the Ahafo Project in Ghana, a specific Monitoring & Evaluation Unit was established to review all CDAs and community development initiatives.• Regular auditing and reporting is also important.

Source: Derived from Bocoum and Otto, 2010; and ERM, 2010.

To ensure that the community is involved in the process and has ownership of the outcomes, proponents should negotiate with qualified communities and stakeholders (see Section 3.1 for more information regarding “qualified communities”) to develop the terms of a CDA. As such, it is important that agreements include the following fundamental information:

- What the goals and objectives of the CDA are.
- Who will manage the agreement and its implementation (e.g., the person(s), board, committee, foundation, trust, forum, or other entity);
- Who will represent the qualified community/communities for the purposes of the agreement;
- How members of a qualified community will be involved in the CDA decision-making and implementation processes;
- How the interests of specific stakeholder groups (e.g., women, indigenous groups, marginalized peoples) will be represented in the decision-making and implementation processes;
- How the project will contribute to community and socioeconomic development and sustainability, and how it will assist in the development of self-sustaining, income-generating activities;

- Consultation and planning that will prepare communities for eventual closure (permanent or temporary) of mining operations;
- Monitoring plans and frameworks, with a focus on participatory monitoring; and
- Funding requirements and a summary of qualifying expenditures, as well as provisions for management, accountability, and transparency of funds.

2.4 Participatory Approach

Participatory approaches—to all aspects of community development and CDAs—are strongly recommended, and represent some of the best ways to cultivate community and stakeholder ownership and empowerment.¹ Specific approaches to participatory development and decision making are provided in the subsequent sections of this Source Book, including stakeholder engagement; capacity development (and needs assessments); the representation of communities and stakeholder groups in the CDA process; the implementation of community development programs and initiatives; and the monitoring, evaluation, and reporting of outcomes and local change.

Participatory processes can also be beneficial beyond the scope of the specific project/CDA process. By involving a broad range of participants from various stakeholder groups and qualified communities, there is also an opportunity for these participants to develop their own capacity for planning and program development, as well as to form relationships with other participants and learn from each other.

Involving community members and other stakeholders (e.g., civil society) in the decision-making process can also lead to improved design and implementation. Local knowledge can help CDA partners better understand the nature of existing natural and community resources, as well as the opportunities and limitations associated with these. Participatory activities can also foster the development of respectful relationships between the CDA partners, manage expectations, identify potential issues early on, and reduce risks on all sides.

Engagement through the CDA process is aimed at community development beyond the direct scope of a particular project. This process should endeavor to improve stakeholder awareness and ownership of CDA activities, promoting community buy-in to the process and the outcomes, and encouraging realistic needs-based solutions. Participation should also go beyond the planning and negotiation stage, and embrace the implementation of CDA programs and initiatives as well.

2.5 CDA Process

This Source Book provides a model process by which partners can develop a CDA; however, this is in no regard the *only* way to do so. While the core components of the CDA process should be attended to, every process should be adjusted to meet the specific needs of relevant stakeholders and contexts. Some components may be emphasized, or de-emphasized,

1. IFC, 2010.

depending on the site-specific circumstances, such as timelines, expected levels of impact, and company, community, and governmental capacities.

Based on the four key phases and the building blocks discussed previously, Figure 2.2 illustrates the core process and dependencies of the CDA approach described in this document.

Table 2.3 summarizes the key output for a CDA aligned to the ideals and process described in this document. Further detail on each output is described in the subsequent sections.

2.6 Timeframe and Process

For stakeholders looking to promote formalized development agreements the CDA process should start as early as practically possible. In most cases, this will mean starting various dialogues—including preliminary engagement, negotiations, and planning activities—during the conceptual design, (pre)feasibility, or exploration phases, and definitely before the start of construction.

In the course of research supporting this Source Book—including case studies of CDA successes and failures—representatives of communities, government, and the private sector all agreed that the development of quality relationships between communities and mining companies is one of the most substantial benefits of a CDA, and that this relationship cannot be developed without the investment of considerable time for engagement. In short: creating trust takes time, but is critical to success.

The importance of both the *process* and *timing* of CDA development cannot be overstated. Two of the most critical elements to be determined early on are with whom the agreement

Figure 2.2. Flow chart: Example CDA development process

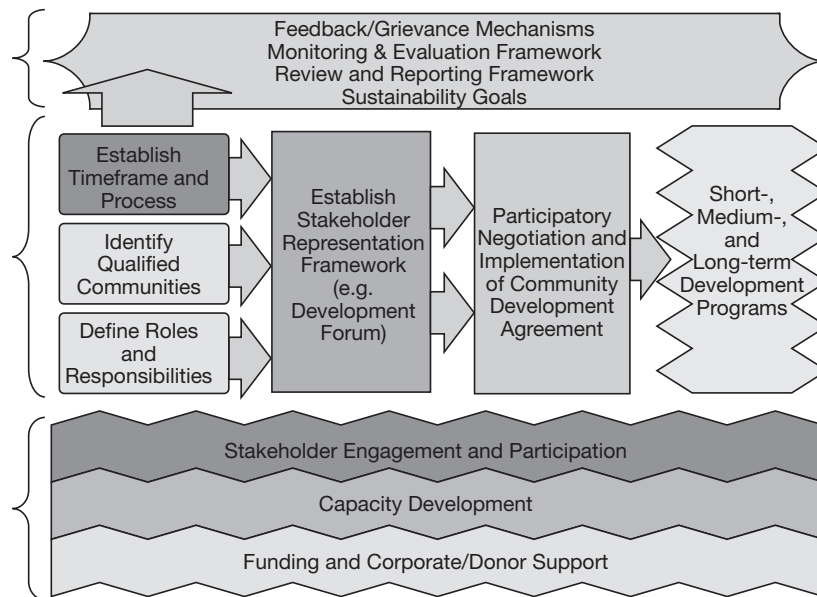


Table 2.3 Summary of recommended CDA outputs

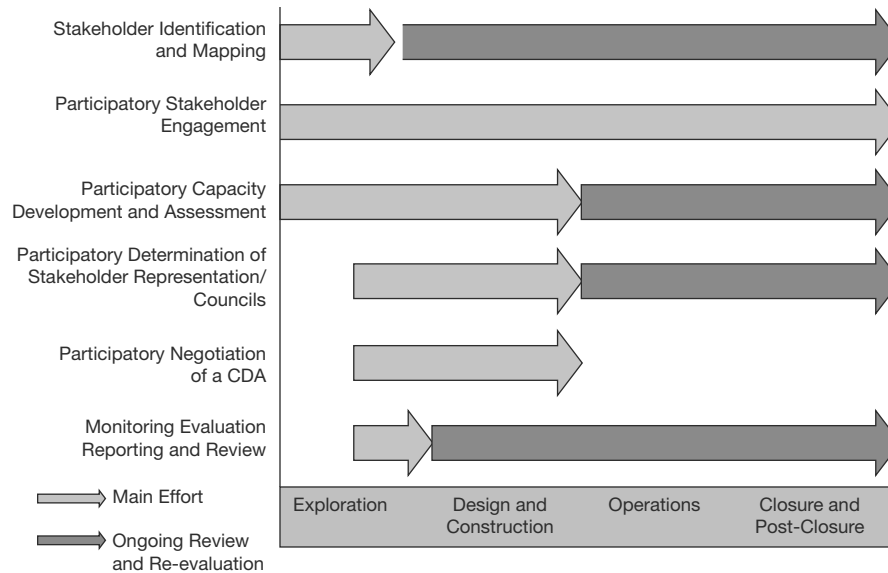
Phase 1: Stakeholder Engagement
<ul style="list-style-type: none">• List of potential stakeholders and interest groups• List of qualified communities• Mapping and analysis of qualified communities• Plan for periodic review and revision of the list and mapping of qualified communities• Engagement plan
Phase 2: Capacity Development
<ul style="list-style-type: none">• Capacity Needs Assessment• Capacity Development Program and Implementation Plan• List of Potential Partner Organizations
Phase 3: Stakeholder Representation
<ul style="list-style-type: none">• List of approved/elected community representatives• Mandate and vision for CDA negotiating bodies
Phase 4: Implementation and Feedback Mechanisms
<ul style="list-style-type: none">• Feedback mechanism• CDA Clauses: Strategic aims of investment activities• CDA Clauses: Management board for investment activities• CDA Clauses: Parameters for community investment• CDA Clauses: Local procurement• Participatory Needs Assessment for Investment• Capacity development targeted toward community investment

will be negotiated, and the methods or strategy by which it will be developed. These elements will form the basis for much of the rest of the process.

Over the entire CDA development process, and the life of a mining project, it is also important that changes are recognized and captured through a monitoring and evaluation program. This program should be designed to respond to changes in stakeholder capacity and characteristics, and the project description. Development initiatives should be periodically reviewed to ensure that they are still addressing the needs of the communities and the overall objectives of the CDA.

For policymakers and local government, the key considerations associated with CDA timeframes and processes are related to the integration of CDA development planning into existing policy frameworks (e.g., for poverty reduction and socioeconomic beneficiation). Governments have an integral role to play in this respect, attempting to place localized development objectives within the wider agenda for regional and national plans and policies. In addition, the incorporation of a longer-term focus for development will assist the sustainability of all efforts.

Figure 2.3. CDA processes over the mine life



In terms of broader project development and private sector concerns and milestones, the CDA should align with a number of other activities. Ideally, a company’s financial considerations during pre-feasibility and feasibility studies should consider the future implementation of a CDA, as well as the costs associated with the development of an agreement (e.g., for capacity development programs). Therefore, governments and other stakeholders should be engaged early on to improve a company’s estimates of the scope and scale of these potential costs.

In addition, project-specific impacts and mitigation measures identified through an Environmental, Social, and Health Impact Assessment (ESHIA) can inform the selection of qualified communities, and stakeholder mapping, for a CDA. It is, however, important to distinguish between the impact mitigation and compensation programs and activities identified through the ESHIA process and the programs and activities undertaken under a CDA with their development focus beyond the immediate scope of impacts for the project. Because of this difference in scope and focus it is also important to identify and differentiate between the beneficiaries of the impact mitigation efforts—the impacted and affected communities—and the beneficiaries of the CDA programs/process—the qualified communities.

Figure 2.3 illustrates the basic timing of the core CDA processes over a simplified life-of-mine.

3. Phase 1: Stakeholder Identification, Analysis and Engagement

The development of a CDA should involve representatives of local government (as well as regional and national governments, if relevant), qualified communities, civil society (including community-based organizations, NGOs, etc.), and other stakeholder groups, together with representatives of the mining company. This chapter discusses how to identify these key actors in the CDA process, how they should engage each other effectively, and the roles and responsibilities of each party.

3.1 Qualified Communities

The foundation of any CDA process is the participation of “*qualified communities*” throughout negotiations and the implementation of the agreement. A CDA may represent significant opportunities for a community, including social, financial, and political gains; thus, the selection and agreement of participants may be a source of disagreement or conflict. These risks may be accentuated in areas of existing political, ethnic, religious, or competitive tensions. As an unfair distribution of benefits (actual or perceived) can be a threat to the overall success of the CDA, it is important that the determination of qualified communities (i.e., those that will be involved in the CDA process) be as robust, transparent, participatory, and (where possible) self-determined as possible.

The following three processes may help guide the identification of qualified communities, each of which is discussed in further detail below:

- Self-identification
- An assessment of risks and impacts
- Ongoing monitoring/adjustment

For private sector-driven CDAs, the development of a list of qualified communities may also benefit from a high-level stakeholder mapping exercise (described in further detail in Section 3.2) during the early stages of the process; this may aid understanding of interactions and prioritizations between various groups. Where CDAs are driven equally by all parties, or proposed by government or community stakeholders, participatory stakeholder mapping and analysis may be equally useful to guard against potential bias, marginalization, and exclusion.

Self-identification is an established and useful tool for community and stakeholder engagement, particularly in the early stages of project development. Self-identification gives communities the opportunity to determine (and voice) whether they believe themselves to be potentially affected, and/or have other interests in the project. This ensures that the complexities which may be inherent in a community—although they may be difficult for outsiders to understand and identify—are not overlooked or disregarded. These complexities may include matters such as traditional land use activities, areas, and tenures; seasonal use of natural resources; cultural, societal, and familial structures and values; the division of

responsibility and roles among and within groups; and the presence of marginalized and vulnerable groups who may not be included through formal and/or government-sanctioned processes. In order to capture these complexities, it is essential that a full cross-section of communities have voice in this process. Some impacts may be felt much more significantly by certain community groups—for example, women may have different experiences of impact than men; some livelihood groups may feel impacts more acutely than others, so ensuring a range of perspectives is important to self-identification.

The value of self-identification is also recognized by international best practice, including IFC Performance Standards 1 (*Social and Environmental Assessment and Management Systems*) and 7 (*Indigenous Peoples*) and the World Bank's OP 4.10.

The outcomes of **impact assessments and risk assessments** should also be considered in the determination of qualified communities, although it is important to recognize that not all communities affected by a project will necessarily be defined as a qualified community (Box 3.1). These assessments should draw from existing processes where possible, such as the overall ESHIA process for the project, if applicable.

When identifying communities through risk and impact assessments, it is important to consider effects beyond the physical footprint of the project and its activities. Potentially impacted communities and stakeholders may also include (among others):

- “Catchment” or “host” communities from which employees, supplies, and services may be drawn, including regional service centers which may be distant from the project site;
- Communities and residents affected by impacts instigated by project supply chains;
- People who use impacted land or ecosystems for subsistence and/or traditional and/or livelihood activities (e.g., hunting, fishing, gathering, agriculture, livestock, cultural practices, etc.), including seasonal uses, and activities which may or may not be formally recognized, tenured, or sanctioned. Traditional territories that may include ancestral lands and burial and sacred grounds, land claim areas, or other geographical boundaries which are often associated with indigenous populations and their land use activities;

Box 3.1. Affected community vs. qualified community

The term “impacted” or “affected” community is a broad term encompassing any group that is affected in some significant way by a project’s activities. This may include both adverse and beneficial impacts, such as loss of land; disruption of livelihood; economic, cultural, health, and infrastructure impacts; and changes in social dynamics and power relations.

In contrast, a “qualified” community defines the groups which are (or will be) the principal beneficiaries of the CDA. These groups are formally represented in the CDA development process.

However, the benefits of the CDA need not be exclusive, and they may be designed to reach nonqualified communities through broader regional development strategies.

Box 3.2. Past experiences—Clan conflicts in Nigeria and Georgia

A long history of experience in Nigeria's oil and gas sector has shown that the drawing of arbitrary lines between communities—and across clan or ethnic boundaries—can create conflict between qualified (i.e., beneficiary) and nonqualified communities, even where relations have previously been peaceful.

The Baku-Tblisi-Ceyhan (BTC) pipeline project in Georgia had similar problems when it defined beneficiary communities as those within 2 km of the pipeline; this buffer was later modified to include communities farther away if they were part of the same clan as a village within 2 km, in a deliberate attempt to ensure that groups of villages remained cohesive and peaceful, and to avoid conflicts related to project benefits.

- Artisanal miners who rely on impacted land for their livelihood;
- Communities, families, or individuals that have cultural ties (e.g., through clans or tribes) to potentially impacted areas or communities (Box 3.2);
- Communities and residents along transportation routes used by the project (e.g., for transport of product, supplies, employees, etc.), including roads/highways, railways, waterways, airstrips, and helicopter flight paths;
- Local, regional and national governments and associated agencies; and
- Local and international nongovernmental organizations (NGOs) and intergovernmental groups, if applicable.

Interviews¹ with a variety of stakeholders related to the CDA process (including community members, indigenous groups, civil society, academics, industry groups, and intergovernmental organizations) agreed that the application of arbitrary geographical boundaries is inadequate as it fails to consider the cultural and geographical nuances of impacts, and that the identification of impacted groups was a key step toward the determination of qualified communities.

The identification of the qualified communities should take place at the early stages of project development and design; ideally prior to commencing detailed CDA planning and engagement activities. The definition of qualified communities should be supported by an **ongoing monitoring program**, under which the list of communities (and existing/anticipated impacts) should be revisited and updated. This re-evaluation should be done periodically over the life of the CDA, the frequency of which should be agreed by all parties and be specified in the signed agreement. Reviews should consider any changes in the project and its context, changes in footprint, changes in employment/procurement, and updated risk and impact assessments. The CDA monitoring program should also include ongoing engagement with local communities and stakeholders so that changes, concerns, and potential issues associated with identifying qualified communities may be promptly addressed.

A number of resources can inform the identification and definition of potential qualified communities. Four basic strategies are described in Table 3.1.

1. ERM, 2010.

Table 3.1. Information sources for the determination for qualified communities

Source/Strategy	Description	Advantages
Desk-based Research	A review of publically available information sources such as census results, economic statistics, maps, academic studies, other industry-based studies (e.g., baseline reports, impact assessments for other projects), government documents, etc.	Provides insight into community characteristics, including history, population, and values. Can also provide statistics which could be used for monitoring/evaluation and planning purposes.
Consultation and Engagement	Engagement between stakeholders (including governance and other leadership, planning agencies, residents, landowners, health/social/education service providers, cultural groups, etc.) about the project and anticipated impacts, and listening to their ideas, values, and concerns.	Can be very valuable in filling gaps in information through other sources. Especially helpful in indigenous communities to understand societal/kin structures and cultural values and priorities. Can also help identify vulnerable and marginalized groups, and define past experiences with industry.
Stakeholder Mapping	Considering communities/stakeholders in terms of the size and nature of impacts, potential to influence the project, and their interactions with other groups (e.g., power relations). <i>See Section 2.3.</i>	Can provide visual mapping of how various communities/groups relate to the project and to each other, which can help define priorities for engagement and inclusion as qualified communities.
Impact Assessment	Identifies potential issues, impacts, and risks associated with development of a specific project. A full impact assessment is usually completed by consultants, although high-level assessments can be a useful tool for anyone.	Typically includes not just an identification of anticipated impacts on local communities and residents (including benefits and adverse effects), but also strategies to mitigate adverse effects and enhance benefits. Also typically supported by a detailed baseline study describing the existing characteristics of study communities.
Media Scans	A review of print, online, and other media articles (past and present).	Provides insight into current events, movements, values, and concerns, and identification of potential issues.
Third-Party Expertise	Independent experts and consultants with knowledge of specific issues and/or the local context. May include social scientists, ethnographers, historians, anthropologists, and other people with relevant backgrounds. May inform the project formally (e.g., through a commissioned study) or informally.	External experts may be able to provide details beyond desk-based research results, including insight into local values and concerns and anticipated impacts. They may also be able to put existing concerns and in context with mining development, the distribution of rights and interests, and explain the nuances and politics between groups.

3.2 Stakeholder Mapping and Analysis

Stakeholder mapping and analysis is a useful tool to help to understand the social landscape and the relevant positions and attitudes of various stakeholders (including qualified communities), as well as their potential to influence and be influenced by the development of a project.

Stakeholder mapping is an activity that visually plots different groups/communities along two variable axes: *Impact* and *Influence*. In this exercise, each group is considered separately and placed on the Stakeholder Map (Figures 3.1 and 3.2). This activity is an integral part of identifying stakeholders and can be used to help determine qualified communities for the broader CDA process.

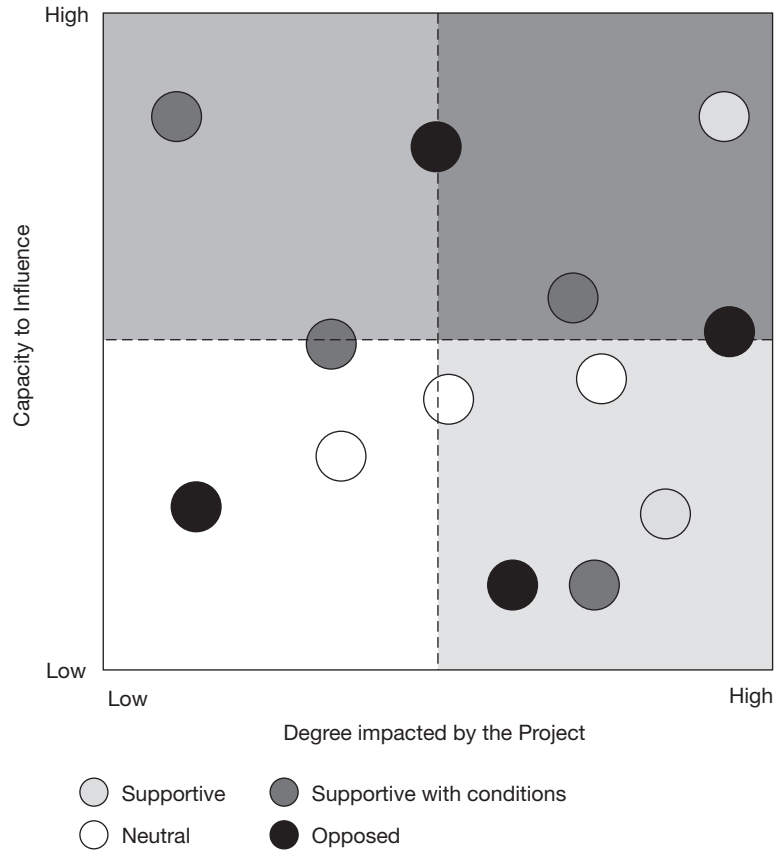
The annotation in Figure 3.1 highlights the level of engagement that stakeholders should pursue with one another dependent upon their categorization.

Stakeholder mapping can help CDA participants understand the social landscape of an area. It can also aid in the identification of potential risks and opportunities associated with various groups, and help prioritize relationship-building efforts. As with stakeholders themselves, stakeholder maps are dynamic and will change depending on current opinions, stresses, leadership, and relationships among, as well as between, groups.

Figure 3.1. Basic stakeholder mapping concept



Figure 3.2. Example stakeholder map



Source: IFC, 2010.

In terms of mapping methods, a number of variations exist, although they are all tied to the central concepts of stakeholders' *ability to influence* a project, as well as *the degree they could be affected by* (or how much interest they have in) a project. The exercise can be enhanced in a number of ways, such as:

- Using markers of different colors to denote different levels of support or opposition to the project (as shown in Figure 3.2);
- Using markers of different sizes to denote the size of the subject group (population, membership, etc.);
- Using different markers to denote whether the subject group will be beneficially or adversely impacted by the project (or “mixed” if they will experience both benefits and adverse effects);

- Creating different maps for different issues/concerns (e.g., jobs, procurement, environment, land use, culture); and/or
- Mapping “key issues” based on the degree of importance to stakeholders, versus the potential impact on the project, to identify potential focus areas for the CDA.

Further analysis of the stakeholder map(s) may include questions such as:²

- How and to what degree will each stakeholder group be impacted (types and degree of impact)?
- Who will benefit from the project? Who will not benefit? Does this pose a risk, and what can be done to change this?
- Which groups are supportive/opposed/neutral, and why?
- How might a CDA address the various stakeholder groups (i.e., the qualified communities) and reduce risks to the project?
- Who are the priority groups to be involved in the development and negotiation of the CDA?

By improving the understanding of the socioeconomic context and inter-relationships of a project, stakeholder mapping can help identify the qualified communities to be included in the CDA negotiation process. This may include communities who may otherwise be excluded from the process, as well as civil society/interest groups with an interest in development or specific project-related issues. Keep in mind also that groups may change in their ability or effort to influence an activity, based on how it impacts them.

3.3 The Roles and Responsibilities of Stakeholders

It is important that the roles of industry and government be clearly defined in a CDA, to avoid situations where the mining company takes on the role of government in terms of community planning, development, and the provision of services. The CDA should be mutually beneficial to qualified communities and governments and the mining company; as such, the agreement should support and enable the community to engage with and benefit from the project, while also meeting the needs of the business (i.e., avoiding simple philanthropy). From government’s perspective, CDAs provide an opportunity to harness the resources of the private sector, supporting the delivery of equitable benefits from mineral wealth.

With respect to community development and the provision of infrastructure and services, the line of responsibility between government and developers is often blurred. Normally government is responsible for the delivery of core services such as health, education, social resources, law and order, physical infrastructure such as roads, airports, community water and sanitary workings and environmental protection. In practice, however, these roles have been taken on by some developers in response to a lack of local government capacity (or

2. Derived from IFC, 2010.

on-the-ground action) to provide these basic services. In addition, companies often take on additional roles in terms of financial, material, and technical support; monitoring and evaluation; coordination; and training and skills development.

Thus there is no uniform description of how roles and responsibilities should be assigned among industry and government. This should be established for each project so that it is locally relevant and efficient, and should consider the capacity of governments, as well as the degree of legitimacy with which they are perceived by communities. The extent of a government’s involvement could vary considerably between different jurisdictions. Some core responsibilities have been identified for both developers and government (Box 3.3), although these are subject to local needs, capacities, and dynamics.

Box 3.3. Core responsibilities of industry and government

<p>Industry:</p> <ul style="list-style-type: none"> • Participate in good faith in the CDA negotiation process. • Act transparently and disclose all relevant information. • Manage expectations, being clear what the company will and will not do. • Provide financial and other resources to enable the objectives of the CDA. • Honor the company’s commitments in the CDA. • Take action to improve local capacity, if and where needed. • Actively participate in the governance of the CDA, using the processes defined in the agreement wherever practical. • Partner with other organizations, where possible, to improve results. • Respond promptly and constructively to community concerns and grievances. • Advocate (to government) on behalf of communities if one or more levels of government have failed to meet their responsibilities. • Maintain open and inclusive engagement/communication with communities included in the CDA. • Consult with the community and government regarding any material change in the mine plan, related activities, and/or the scheduling of permanent or temporary mine closure. 	<p>National and Sub-National Government:</p> <ul style="list-style-type: none"> • May be a contributing and/or signing party to the CDA. • Establish an enabling regulatory environment that supports and facilitates CDAs. • Act as an “honest broker,” in some cases, to ensure other parties reach and sustain an agreement. • Contribute to resourcing arrangements within the CDA (e.g., matching or supplementing funding). • Participate in CDA governance, such as advisory and monitoring committees. • Deliver programs that are aligned with, or part of, the CDA. • Coordinate government programs/initiatives at regional and local levels. • Provide information (regarding rights, processes, etc.) to communities and individuals who are engaging with resource companies. • Support capacity building initiatives. <p>Local Government:</p> <ul style="list-style-type: none"> • Be a representative of the qualified communities. • Participate in CDA governance such as advisory and monitoring committees. • Be a partner in the delivery of programs that are aligned with, or part of, the CDA. • May also take on national/sub-national government responsibilities if capacity exists.
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Source: Derived from CSR, 2011.

Depending on whether industry or government is “driving” the CDA process, the roles and responsibilities of various parties may be slightly adjusted. However, regardless of the process leader, there are certain key features of each player’s role.

3.3.1 GOVERNMENT

It is ultimately the responsibility of government to ensure that qualified communities realize benefits from development, and that the rights and interests of stakeholders are upheld. To this end, government’s role is to take the lead by setting policy and standards to promote local development; by developing and implementing systems for monitoring and evaluation; and by planning for various types of land uses, as well as social and physical infrastructure.

Government agencies should provide a clear and robust framework for mining project development, throughout the project lifecycle (i.e., exploration to post-closure). They should leverage state and external resources to support this goal, including internal capacity development, if needed. Government may also be a contributor to the financial foundation of a CDA, for example through cost-sharing or supplemental funding.

At the local level, government should provide capacity support to enable residents of qualified communities and other stakeholders to effectively engage in the CDA negotiation and development process, as well as the implementation of the agreement and its initiatives. Government should also ensure that services are delivered locally and should take steps to avoid potential dependency issues that may be created by CDA programs and benefits. If local government does not have the required authority or capacity in this area, regional or national government bodies should ensure that the best interests of communities are addressed.

Government may also be a party to the legal agreement of a CDA. While some stakeholders may argue that the role of government is to take an arms-length regulatory role, the decision on whether to include government as a formal signatory should be determined on a case-by-case basis. This is a matter for discussion with the developer and qualified communities (i.e., the role should not be determined by government alone), and may be influenced by factors such as the capacity of qualified communities and other stakeholders, the level of trust in government, and the benefits that government can bring to the table. Either way, it is not uncommon for governments to be involved in, and support, the negotiations leading up to an agreement.

Finally, it is also important to note that local-level governments may be involved in the CDA process in a different manner, and to a different extent, than national or regional governments. Often, local governments have significantly more restricted responsibilities than higher agencies, but they are also closer to the needs and interests of the qualified communities. Thus, depending on local capacity and trust, local government may act as a knowledgeable and balanced representative of local communities and stakeholders. They may also be involved in CDA governance structures (e.g., advisory boards, monitoring committees) and/or as an agent for the delivery of programs that are part of, or aligned with, a CDA.

3.3.2 MINING COMPANIES

Mining companies (or other industry/private sector entities) should provide appropriate representatives to support the CDA process. These groups should be able to offer valid inputs into the process, and they should have sufficient commitment, capacity, and buy-in to the CDA process so that they can truly add value to the process and its outcomes.

Another critical characteristic for representatives of a mining company is that the selected participants have sufficient authority and responsibility to make key decisions and commitments. They should also understand the business direction and priorities of the company, so that they can better speak for the company and avoid making promises that might not be honored by the company.

In general, it is expected that mining companies provide financial and other resources to support the CDA development process, including support for other participants if needed. If capacity is low among one or more communities or stakeholder groups, the company should take proactive steps to address capacity constraints, potentially in partnership with other organizations. Companies should disclose all relevant information, manage expectations by being clear about what the company will and will not do, act transparently, and make efforts in good faith to build relationships with other parties. Open and inclusive engagement should be maintained with communities and other stakeholder groups, who should also be consulted if there are material changes to mine development plans, designs, or schedules.

Companies should participate actively in the governance and implementation of an agreement (using the processes described by the agreement, where applicable). Commitments that are made in the agreement, and throughout the agreement-making process, should be honored, and companies should advocate on behalf of communities if other signatories to the agreement fail to meet their responsibilities. Mining companies should also make efforts to respond promptly and constructively to any feedback, concerns, or grievances expressed by communities or other stakeholders; this might include the establishment of a feedback mechanism, as described in Section 6.3.

In scenarios where the company is *not* leading the development of a CDA—if, instead, a government agency is responsible for driving and facilitating the process—it is critical that the company be invested in the process and its outcomes. Communities, governments, and other stakeholders have the right to request that suitably senior company representatives join in negotiations.

3.3.3 THIRD PARTIES

The contribution of third parties (such as NGOs and community-based organizations) should also be recognized, and collaboration between all parties (industry, government, civil society, and communities) is an important part of the CDA development, negotiation, and implementation process. The use of tripartite and other multiparty agreements (which

may be components within a CDA) can promote accountability between parties; however, involving too many parties can also hamper relationship building and the development of trust between groups.

It is important that NGOs and other third-party organizations have clearly defined roles and responsibilities, and that their priorities and interests are identified to clarify why and how they are involved in the CDA process. These organizations can be valuable resources for many aspects of the CDA process, including needs assessments and local capacity building initiatives, particularly if they possess both a solid local foundation and knowledge base, and the needed skills in these areas.

Local community groups also have an important role in the CDA agenda, particularly in the identification of local needs and priorities and in local ownership of the agreement and its goals. They can also enhance a CDA through local knowledge, values, and content, and can often facilitate efficient mobilization of local resources. Community groups can also be a way to integrate potentially vulnerable or marginalized peoples into the CDA process, including women, cultural minorities, elders, and livelihood groups.

Community groups and NGOs often play an important role in participatory monitoring and evaluation programs, which can greatly enhance local acceptance of and buy-in to a project and its benefits.

3.3.4 VARYING RESPONSIBILITIES

The question of whether governments should be a party to a CDA is one which will depend on the local circumstances, particularly in terms of national and sub-national tiers of government. As indicated earlier, some argue that this level of government should not be party to CDAs as their regulatory function should remain objective; that is, that the focus of CDA development should be on community-level governments. However, it is often necessary for higher levels of government to be involved to some degree in the negotiations, and these agencies may also be assigned obligations in the resulting agreement.

It is not uncommon for governments to be included in negotiations and commitments, and this is seen in examples from Canada, Australia, and Papua New Guinea (among others).³ However, in some situations, community mistrust of one or more levels of government may be apparent; in these situations, it may be necessary to exclude government (or particular agencies) from the development of the agreement in order to achieve community participation and buy-in to the CDA.

The involvement of government, particularly at the local level, can be truly beneficial if this supports the integration of CDAs into local community and economic development planning. The issue of roles and responsibilities is one which needs to be addressed early on, together with budget issues and national legal obligations e.g. with respect to the provision of infrastructure (water, electricity, roads) and education and health. This analysis

3. CSRM, 2011.

Box 3.4. Workshop-driven solutions to three governance scenarios

A multi-stakeholder workshop convened to assess the initial findings of the CDA work in June 2010, discussed three basic governance scenarios under which CDAs could be developed, and whether or not agreements should be made primarily with local governments under these circumstances. The following provides a high-level summary of the outcomes of this discussion.

- **Scenario 1:** The community has a viable, functional, and representative local representation. *Recommendation: Form agreement with local representation, ensuring that community groups also have a voice throughout the negotiation process.*
- **Scenario 2:** The community has elements of various institutions, but none appear to be fully developed and functional, and there are numerous communities who all need a voice. *Recommendation: Form agreement with a regional/sub-national development council, ensuring that community groups and local institutions also have a voice throughout the negotiation process.*
- **Scenario 3:** There is no functional government in the community. *Recommendation: Establish a mechanism/foundation/forum made up of community representatives, which may initially be sponsored by the company but will transition to full community ownership.*

would also recognize boundaries of responsibility and address issues such as sustainability of assets to ensure the long-term maintenance of infrastructure projects that may arise from the CDA, as well as supporting the sustainability of other local investments. For national policymakers, CDAs represent a way to extract non-taxed benefits from the mining sector. Where aligned with greater policies and programs, CDAs can denote a means to maximize mineral wealth, employing these resources toward poverty reduction and other economic goals. (See Box 3.4.)

3.4 Engagement Planning

As determined above, the early engagement of qualified communities and other stakeholders is a key factor in the development of a successful CDA. Creating an engagement plan is a useful step to guide the engagement process over the life of the project, showing how engagement activities will develop or be modified as project activities evolve and more information is gathered. An engagement plan can be facilitated by government and/or the private sector.

Similar to the rest of the CDA process, an engagement plan should consider the national legal structure and be tailored to the local context, including the site-specific needs, capacities, and objectives of the qualified communities. A basic engagement plan should identify:

- What are the goals and objectives of engagement for this project/process?
- What is the local context, including challenges, constraints, risks, and opportunities?
- Who are the key audiences? What information do they need? What capacities do they have, and what capacities might need to be developed? These questions should be considered for various groups, so that groups of high priority are identified.
- How will information be disseminated? Will this approach need to be modified for different groups? Are there language or technical capacity issues to address?

- What is the proposed schedule for engagement? How often will activities (e.g., public forums, working group meetings, government/regulatory meetings, development committee meetings) occur, and what are the major milestones?
- What supplemental information methods will be used (e.g., websites, media)? What stakeholder groups are expected to benefit from these? What groups are not being reached?
- Who is responsible for the implementation and management of the components of the engagement program?

3.5 Phase 1 Outputs

At the end of Phase 1, which should be completed as early in the CDA development process as possible, the following resources have been developed:

- 1–A List of potential stakeholders and interest groups
- 1–B List of qualified communities
- 1–C Mapping and analysis of stakeholders
- 1–D Plan for periodic review and revision of the list and mapping of stakeholders
- 1–E Engagement plan

4. Phase 2: Capacity Development for a CDA

As previously stated, the development of an effective CDA requires informed and meaningful participation from, and buy-in by, qualified communities and other stakeholders. Thus, it is critical that the full spectrum of stakeholders are able to participate in the CDA development process, and have the capacity to do so effectively. This includes both the capacity to negotiate a fair, well-managed, pragmatic and locally relevant CDA, and the capacity to take ownership of the final agreement and its implementation.

Unfortunately, not all individuals, groups, and communities have the skills and resources required to participate as effectively as others. Wherever possible, stakeholders lacking capacity to participate in the development of the CDA should be provided with the means to do so; this support may come from government, mining companies, NGOs, or other enabling parties (see Box 4.1).

Meaningful participation among qualified communities and other stakeholders may be strengthened through strategic capacity development programs. This may include the provision of basic training in negotiation skills, processes, and expectations; building cross-cultural communication skills and understanding; providing space for offices or negotiation centers; providing maps, reports, access to information centers/databases; funding to hire external consultants and counsel; providing childcare services to enable the participation of women; and training in basic monitoring and data collection skills.

Conversely, a lack of capacity not only will inhibit a stakeholder group's ability to be involved, but is also a risk to the overall CDA process. Past examples have shown that it is difficult—and often counterproductive—for companies, governments, and other stakeholders to work together successfully where one party lacks basic capacity, no matter how progressive and supportive the overall objectives, or where certain parties—for instance, certain community groups or interests—are left out of the process because they lack the capacity to engage. Capacity constraints that may affect relationships between industry and communities include the ability to administer funds or to promote the long-term development of their own communities. In some cases, benefit-sharing and financial transfers can in practice be detrimental if monies do not end up addressing broad community and capacity development needs.

Box 4.1. What is capacity?

Community development practitioners often refer to “local capacity” and “capacity building” as key components of development programs. In this context, capacity refers to the capabilities of an individual, group, organization, or population (at all levels ranging from local to international) to effectively be involved in planning, developing, implementing, and evaluating programs to meet their needs and development goals. The United Nations Development Program (UNDP) identifies the core components of capacity as the abilities to “*perform functions, solve problems, and set and achieve objectives in a sustainable manner.*” Capacity development is thereby the process by which these abilities are obtained, strengthened, maintained, and adapted over time.

Box 4.2. Key questions for capacity assessment and development

Capacity for Why? What are the priorities for capacity assessment and development? What are the goals for this (and future) dialogue? What expectations do different groups have regarding results or outputs?

Capacity for Whom? Whose capacities need to be addressed? For whom would capacity development have the greatest impact?

Capacity for What? What specific capacities and core issues should be addressed?

Source: UNDP, 2008.

Thus, as the success of a CDA is seen to be largely tied to the degree of stakeholder involvement and ownership—which is in turn dependent on the capacities of those involved—capacity assessment and development should be one of the *earliest* priorities of the CDA process so that a suitable foundation is established for ongoing engagement and negotiation. Ideally, local capacity will have time to develop prior to the start of construction and/or significant engagement activities.

The following sections provide guidance on the processes of assessing and developing stakeholder capacities, the use of participatory methods to do so, and potential partnerships to support these activities. Throughout these sections, three key questions (summarized in Box 4.2) can be considered to help frame and clarify capacity development objectives.

4.1 Capacity Assessment

The first step of any capacity development program is to assess the needs of qualified communities and other stakeholder groups, so that the resulting program can specifically address these gaps. Stakeholders with capacity shortages in the CDA process are often the “host communities” in developing nations, particularly those that have had little exposure to industry and the development sector. However, capacity gaps may affect *any* stakeholder, including governments, NGOs, and the corporate and site staff of mining companies, and may vary within stakeholder groups.

This section describes some common types of capacity that may be present—or lacking—among stakeholders, as well as a participatory framework to assess local capacity needs. It is recommended that a thorough capacity assessment be performed, in an inclusive and participatory manner, by and on qualified communities and other stakeholders.

4.1.1 TYPES OF CAPACITY

A lack of capacity could affect participation and engagement levels anywhere, although it is likely to be a challenge more often, and to a greater degree, in developing countries and emerging markets. As an example, capacities and resources that may be lacking in these areas might include:

- knowledge about the mining (and other extractive) industry, its processes, and its impacts;
- financial resources to attend or organize meetings, etc.;

- time to attend meetings or be otherwise engaged;
- available people to actually be involved in project-related engagement and planning;
- access to technical resources to provide background support (e.g., legal counsel, geologists, environmental and social specialists);
- transportation;
- literacy and language skills;
- communications and administrative resources, equipment, and infrastructure (e.g., Internet access); and
- experience or exposure to the “western” worldview, communication styles, and/or the wage economy.

Generally speaking, capacity constraints can be categorized as three different, but related, types: functional, technical, and behavioral. With respect to functional capacities—which are often the foundation for community capacity development programs—UNDP has identified five central focus areas.¹

First is the capacity to **engage and participate**, including the ability to build trust and respect, and to partake in participatory processes. Engagement capacity also includes the ability to listen to others, to ensure that all groups are fairly represented, and to help give voice to marginalized or silent groups.

Another functional capacity is the ability to **analyze and assess** a given situation, including the identification of assets, opportunities, and challenges. Visioning is also an important component of assessment, including the ability to define a vision and mandate and to set realistic goals and objectives to drive development.

These skills will support a capacity for **strategic thinking**, which enables the development of policies and strategies, map various strategies and options, and prioritize activities. Strategic thinking skills are also required for risk analysis, feasibility analysis, operational planning, and the analysis of social networks and influences.

Financial and management abilities are another core capacity area, and are often the focus of capacity development programs. These capacities include the ability to forecast, budget, and analyze costs, and to allocate funding accordingly, and to run financial reports and perform general bookkeeping. They also include the ability to implement projects and manage them toward their goals.

Finally, **monitoring and evaluation** are also key functional capacities related to the establishment of measurable goals and objectives, the definition of outcomes and indicators, the formulation of appropriate questions, and the collection and analysis of data.

To address capacity constraints, the World Bank identifies four central business approaches to capacity development (Box 4.3).

1. UNDP, 2008.

Box 4.3. Focus areas for capacity development

<p>Knowledge Exchange</p> <ul style="list-style-type: none">• Sharing of information and experiences• Debates about policy and strategy options• Topic-specific field visits between countries• Dialogues among stakeholders and experts <p>Structured Learning</p> <ul style="list-style-type: none">• Courses, workshops and conferences to develop skills and improve capacity• For government, civil society, and the private sector	<p>Innovation</p> <ul style="list-style-type: none">• Sharing innovative and practical solutions• Encouraging the adoption of new technologies and practices <p>Leadership</p> <ul style="list-style-type: none">• Managing change• Managing for results• Supporting decision makers and emerging leaders
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Source: World Bank, 2011b.

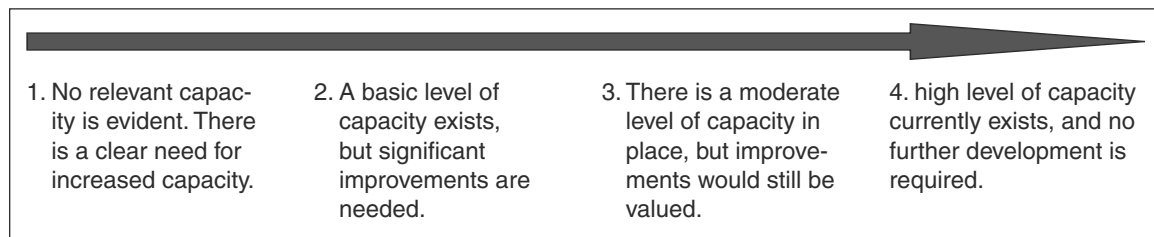
4.1.2 PARTICIPATORY NEEDS ASSESSMENT

To define the scope and objectives of capacity development efforts for a specific project or area, it is important that the specific needs of that area are identified. As with other parts of the CDA process, the involvement of all stakeholders in the identification (and prioritization) of their needs is a good way to ensure that the resulting analysis is locally relevant and accurate, and to achieve broad stakeholder acceptance of the results and the subsequent direction of the program.

A participatory assessment of capacity needs should include the following key steps, all of which should be conducted in a participatory manner. Both qualitative and quantitative methods of assessment can be used to describe capacity levels, depending on the type of information available.

1. **Define a range of competency areas**, such as leadership, participation, organizational structures, problem-solving, mobilization of resources, critical thinking (e.g., cause and effect), creating linkages and partnerships (e.g., between communities, residents, organizations, and external parties), finance, administration, monitoring and evaluation, reporting, management, planning, etc. Depending on the local needs and priorities, it may be useful to combine some competency areas (e.g., Finance, Administration, and Management) or to break individual topics into further detail.
2. **Determine the existing (baseline) level of capacity** for each of the identified core competency areas. This can be facilitated through a series of questions (also developed in a participatory manner) targeted at each skill area to identify the existing strengths, weaknesses, and challenges. Differences at the individual, group, organization, and community levels can be highlighted at this time as well. A rating scale may help facilitate a consistent definition of capacity across all competency areas (Box 4.4).
3. **Discuss and define how success is envisioned** in each competency area. These definitions will help to clarify the nature and magnitude of existing capacity needs.

Box 4.4. Example capacity rating scale



4. **Identify the key capacity needs** based on the description of existing levels, and the desired end-state. A participatory discussion can prioritize these needs from the perspective of the community and stakeholders, considering both the size of the gap and the perceived importance of each competency area.

To guide the determination of baseline capacity levels, Table 4.1 provides a summary of some basic types of capacity, and questions to assess capacity in these areas.

Table 4.1. Capacity requirements and questions

Requirements	Questions
Functional representative structures and processes	Does the community or stakeholder group have able and effective representative groups/individuals?
Knowledge of the project and of mining/ extractive industries/development practices	What experience has the community/group had engaging with extractive companies? What understanding do they have of the proposed project and its potential benefits and adverse impacts?
Capable representatives who have the time and motivation to participate	Do community leaders and other stakeholder representatives have the skills and time to participate? Are they motivated to do so, or do they view the process as a chore?
Understanding and acceptance of the broad principles of agreement making	Is the local culture one where people are comfortable with (and experienced in) negotiation and agreement making?
Commitment to respect the agreement and to make it work, and ability to ensure that people do not act contrary to the agreement.	Have there been similar agreements developed in the past? Is there a history of respect between communities/stakeholders and industry?
Willingness and availability of representatives to participate in agreement governance	Is there a willingness (by all parties) to focus on achieving broader development objectives, beyond basic cash compensation? Are representatives available to implement and govern the agreement's actions/outcomes?
Knowledge of administrative and organizational systems and processes (e.g., governance of trusts, fiduciary duties, meeting procedures)	What experience and training have community representatives, leaders, and other stakeholders had in organizational governance (e.g., management of trusts and funds)?
Resources and expertise to design, manage, and deliver community-run programs	What resources can communities and other stakeholders draw from (e.g., technical expertise, financial and/or organizational support)? What experience exists with respect to running community development initiatives?

Source: Adapted from CSRSM, 2011.

The focus of the participatory needs assessment should be on facilitating, listening, and incorporating what is heard into the needs assessment process. This process should not be heavily directed; if predetermined outcomes are merely brought forth for participants to approve or endorse, the capacity development program (and related components of the broader CDA) could be jeopardized by a lack of grassroots community/stakeholder ownership and support.

Further resources related to participatory capacity needs assessment include:

The Capacity Development Results Framework: A strategic and results-oriented approach to learning for capacity development (World Bank Institute, 2009);

Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets (IFC, 2010); and

Capacity Assessment Practice Note (UNDP, 2008).

4.2 Capacity Development

Various techniques may be used to support local capacity development, ranging from “no-strings-attached” financial contributions, to the provision of training programs, to the appointment of external parties to facilitate fair and open discussion. Some capacity development methods are highlighted in Table 4.2 concerning the broad themes of agreement-making, governance, and program delivery.

When designing a capacity development program, it is recommended that it be demand driven, take a systems view, promote action-based learning and participation, consider the local and historical context of the area, be creative, and ensure community ownership, in accordance with recognized best practice.^{2,3}

Demand driven: Efforts should be designed to respond to the interests and needs that are expressed by qualified communities, local government, civil society, and other stakeholders.

Systems view: The design of the program should consider the effect that capacity development might have on broader social and institutional systems (e.g., focus on a particular capacity area may sidetrack an existing organization from its stated mission; capacity development programs for women may cause tension between male and female groups).

Action-based and participatory learning: The use of participatory methods has been found to be the most effective way to build capacity, allowing people to actively be involved rather than trying to learn passively.

Understanding the historical context: Past capacity building efforts (and their success or failure) can lend insight to the development of new programs. Find out what has worked and what has not, and why.

Understanding the local context: Although this Source Book and other documents provide guidance on the recommended content of, and approach to, capacity development

2. IFC 2010.

3. UNDP 2008.

Table 4.2. Examples of capacity development methods

Method	Capacity Issue(s) Addressed	Description
<i>Provide financial and logistical assistance</i>	Time and resources are needed for community members and representatives, and other stakeholder groups, to participate in the discussions, negotiations, and consultations required to develop a CDA. Some may be better able to manage this process than others, but it is likely that at least some will need support.	Companies (and potentially government) should be prepared to underwrite some costs of the agreement-making process. This may need to be discussed and agreed at the start of the engagement process. May include financial contributions to support administrative, travel, staffing costs, etc., to enable participation. May also include logistical support such as the provision of transportation to/from meetings.
<i>Help communities access independent expert advice</i>	Technical skills, knowledge, and expertise may be lacking among qualified communities and other stakeholders, including those skills related to environmental, social, and engineering disciplines. Without this knowledge, these groups are poorly placed to comment on or accept the potential impacts of a project.	Information and conclusions provided by the company and its consultants may be viewed by communities with skepticism or mistrust. Thus, the best approach may be to provide financial resources to communities and stakeholder groups so that they can choose their own experts to verify data and provide recommendations, as well as obtain legal advice.
<i>Provide training related to agreement-making and negotiation processes</i>	Community members and leadership may not have experience with formal negotiation procedures, and will not be able to effectively participate in the negotiation process without these skills. It is important that the principles and procedures that will guide the CDA development process are mutually accepted and understood.	Training can be provided to improve communities' and stakeholders' understanding of interest-based discussions, the importance of negotiating in good faith, the process and requirements of participating in multi-stakeholder dialogue and roundtable discussions.
<i>Ensure a good understanding of the project</i>	The negotiation process will be supported if all participants are informed and have an equal understanding of the project and associated information. This includes knowledge of the extractive processes, impact pathways, and the drivers and constraints of responsible mine development and corporate behavior.	Community awareness and understanding can be facilitated by providing informative materials in the local language(s), using clear and simple terminology, and visual aids and presentations. Other methods may include site visits, and helping communities to connect with other communities that have experience with similar developments. These activities may have more credibility if led by an external organization (e.g., NGO, government, land council).
<i>Appoint independent mediators</i>	If a community has had little or no prior experience dealing with extractive industries and companies, there may be concerns about potential power imbalances in the negotiation process.	Power imbalances (real or perceived) can be addressed by the appointment of independent, skilled mediators. Ideally, the state should take responsibility for appointing and funding mediators, but they may or may not have the capacity (or the trust of the communities) to do so. If the company decides to take on this role, it is important that the mediating party be clearly seen as independent from the company, and accepted by the community.

(continued)

Table 4.2. Continued

<i>Fund initiatives to improve local governance capacities</i>	If local governance capacities are lacking, the long-term success and implementation of a CDA, as well as the overall stability of the community, may be affected.	Companies may consider longer-term strategies to develop local governance, such as supporting reputable organizations to work with local communities to strengthen governance processes and representative structures. Specific activities might range from the resolution of long-standing disputes and conflicts within/between communities and groups, to providing practical assistance setting up and resourcing representative bodies.
<i>Networking, partnerships, exchanges, and creation of new entities</i>	Sharing of information and resources can be promoted through networking and potential partnerships among and between communities, civil society, etc., thus enabling all parties to more effectively engage in the CDA negotiation and development process.	Connecting communities, organization, and individuals through formal and informal affiliations can help to expand service delivery, improve information sharing, set performance standards, and empower vulnerable groups. New entities, such as co-ops, councils, and common interest groups can also help achieve these goals.
<i>Training and skills development</i>	Specific capacities and skills which are lacking can be developed through formal or informal training and skills development programs.	Training and skills development can be supported by companies in a variety of ways. Benefits can be as simple as having company staff act as role models, coaches, or mentors to emerging community leaders to help develop local leadership skills. The same can apply to technical expertise, such as human resources, trades, geologists, and researchers. More formal programs may include support for external experts to provide training to local service providers (health, education, social services) to strengthen the quality and number of available services.

Source: Adapted from CSR, 2011 and IFC, 2010.

programs, every program should be tailored to the specific needs and characteristics of the local community.

Creativity: Capacity development programs do not need to be complicated in design and implementation. Different approaches can be taken to address the needs of different situations. The level of detail can range from high-level to very specific, and may cover the full spectrum of capacity areas, or just a few strategic areas.

Community-owned: Although facilitation by an external party can be useful, the outcomes of both the capacity assessment and the process/strategy for capacity development should be driven by the affected communities and stakeholders.

Potentially vulnerable or marginalized stakeholder groups—e.g., women and indigenous peoples—should also be specifically considered, and may be priorities for capacity

development in some circumstances. For example, in order to narrow a potential capacity gap between men and women (or other disparate groups), it is important to create an enabling environment so that women are able and welcome to participate in capacity building activities, as well as to incorporate broader gender equality perspectives in these activities to increase gender awareness and understanding at the community level.

Indigenous groups and cultural/ethnic equality can be addressed in a similar manner. It is also often productive to work with or through existing indigenous entities (e.g., councils, consultants) as this can both increase acceptance of the program by the indigenous community and strengthen the organizations' capacity to provide these services themselves. See Box 4.5 for an example.

Building on the questions of capacity for whom, what, and why, the implementation of a successful capacity development program should also answer the questions of (a) who is responsible for delivery of the program, (b) when specific capacities need to be developed, and (c) how success will be measured.

Measuring the success of capacity development is typically one of the largest challenges of any program. This step is often overlooked, or efforts are made to measure the capacity at later dates without having sufficiently laid the groundwork for monitoring and evaluation. Efforts to obtain some measure of success are recommended, since local capacity levels are such an important part of the broader CDA strategy.

Both quantitative and qualitative methods can be used to ascertain changes in capacity levels over time, including changes in behaviors, perceptions, and attitudes among individuals, groups, organizations, governments, and communities. Changes may appear in

Box 4.5. Case study—Australia

For Rio Tinto's Argyle Diamond Mine in western Australia, a *Participation Agreement* with traditional landowners in the area included the establishment of a Relationship Committee to govern the ongoing implementation of the agreement. To facilitate effective participation, the agreement also included commitments to provide training for all representatives selected to serve on the Relationship Committee. The expectations of committee members have also been defined, and necessary capacities include:

- Having an understanding of the Indigenous Land Use Agreement (ILUA) and land management plans
- Understanding the operations, structure, policies, and procedures of the Argyle Mine
- Understanding the procedures of the Relationship Committee
- Having the ability to understand and assess budgets and other financial statements relevant to the Relationship Committee
- Being able to understand and assess written and oral reports

A Secretariat and Executive Committee were also established, and they supported community involvement by helping to organize meetings, delivering announcements and updates, providing administrative assistance, organizing training sessions, and communicating with the company on behalf of traditional landowners.

a number of forms (Box 4.6). Opinions about the nature and degree of changes may also vary between various stakeholders; thus, the use of participatory methods to identify and evaluate changes (including the definition of objectives and baseline conditions) remains important so that results are driven and accepted by all stakeholder groups.

A number of challenges should also be acknowledged; depending on the qualified communities, and the history of industry and extractive projects in the past, these challenges may warrant consideration during the design of the capacity assessment and development program. Challenges may include assessment or consultation fatigue; skepticism about the value and/or validity of results; suspicion regarding the intended use of results; a disconnect between capacity assessment results and the structure/objectives of the capacity development program; and difficulty striking the right balance in facilitation level.

Further information and detail regarding capacity development can be found in:

- *The Capacity Development Results Framework: A strategic and results-oriented approach to learning for capacity development* (World Bank Institute, 2009);
- *Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (IFC, 2010); and
- *Capacity Assessment Practice Note* (UNDP, 2008).

4.3 Partner Organizations

A key component to successful capacity development will be the identification and analysis of potential partner organizations for collaboration. Industry, and to a lesser extent government, do not always have the necessary experience required to deliver successful capacity development. It should be recognized that public, private, nongovernmental, and community organizations—with different skills and resources but common objectives—

Box 4.6. Basic principles of the capacity development results framework

The Capacity Development Results Framework (CDRF) was designed by the World Bank to help guide the design, implementation, monitoring, management, and evaluation of programs designed to build capacity at national or sub-national levels.

The CDRF defines capacity development as “a locally driven process of learning by leaders, coalitions and other agents of change that brings about changes in socio-political, policy-related, and organizational factors to enhance local ownership for and the effectiveness and efficiency of efforts to achieve a development goal.”

The main elements of the CDRF are:

- Clearly specified development goal(s);
- Three Capacity Factors: the conduciveness of the sociopolitical environment, the efficiency of policy instruments, and the effectiveness of organizational arrangements;
- A change process based on agents of change empowered through learning; and
- Activities and instruments designed to achieve learning outcomes for the agents of change

Source: World Bank Institute, 2009.

will achieve more by working together than separately. Partnership also tends to reduce costs and avoids duplication of existing initiatives.

Multi-stakeholder partnership for capacity development can be a cost-effective strategy aiming to reach more people, improve the sustainability of the program, share risks, leverage experience, skills, and resources, and develop greater shared ownership of outcomes.

4.4 Phase 2 Outputs

At the end of Phase 2, which should be completed as early in the CDA development process as possible, the following resources have been developed:

- 2–A Capacity Needs Assessment
- 2–B Capacity Development Program and Implementation Plan
- 2–C List of Potential Partner Organizations

5. Phase 3: Stakeholder Representation

The question of who is the appropriate representative of a community or other stakeholder group is not always easily answered. Internal politics and intricacies can be difficult to understand, especially to outsiders. Elected leaderships and other formal bodies of representation may not, in fact, be truly representative of all groups; distinct ethnic, cultural, tribal, gender, and age groups may be left out of consultation and negotiation processes (intentionally or not).

As effective representation is strongly associated with community/stakeholder ownership and buy-in to a CDA, the importance of including the right people is emphasized. This chapter discusses some of the key considerations around stakeholder representation and offers some potential solutions to common problems in this area.

5.1 Community Representation

Communities are—by nature—heterogeneous, and not all individuals, households, and groups have the same access to resources, or the same voice in community decision-making processes. Every community includes people who are more powerful or privileged, as well as those who are more marginalized; the reasons behind these distributions may be wide-ranging, and may include gender, ethnicity, class, caste, age, education level, and income level. Principles of community-driven development highlight the importance of including all groups within a community in order to successfully drive change at all levels.

However, while all groups should be represented, it is impractical to have every community member at the negotiating table. Instead, representatives of qualified communities and specific stakeholders are normally involved, while the broader community remains engaged through activities such as public meetings and focus groups.

The issue of who best represents a community, and all of its facets, may not always be easy to determine. It may be easiest to work through established local political structures (such as elected leaders and councils), but it is important to recognize that these individuals may not fully represent the interests of all groups, and also may not be privy to issues and concerns facing various groups. It can also be difficult to ascertain which governance structures are most relevant in situations where parallel governance systems exist (e.g., elected and tribal/hereditary leaderships [Box 5.1], local and regional institutions), or where social esteem is more important than elected rank (e.g., elders within a community). Communication of information and outcomes back to the broader community is also required, and elected leadership cannot always be relied on to do this.

The identification of community representatives is as relevant for impacted communities as governments and the mining sector involved in the CDA. Communities and civil society should be willing and able to challenge the status quo when identifying representatives for CDA participation.

Box 5.1. Hereditary vs. elected leadership in Canadian Aboriginal groups

Many of Canada's First Nations groups have two parallel, and sometimes competing, systems of governance. Traditional hereditary governance systems are still strong among many groups, whereby clans and houses are represented by a network of hereditary chiefs (titles which are passed down along family lines). However, under the federal Indian Act, the "Indian Band" became the legally recognized system of social/community organization, and the regulated election of a chief and council for each band is legally recognized as the representative leadership for each group.

Today, these two systems of governance exist for many communities. Sometimes they work in partnership with each other, often with the band dealing with the administration of funding and programs on behalf of the federal government, while the hereditary chiefs oversee the management of lands and resources, as well as ongoing land claims (if relevant). But sometimes this division causes strife and can result in competing and contradictory demands on proponents attempting to engage the community.

5.1.1 RISKS OF INEQUALITY AND INEQUITY

In situations where community governance is partially or fully lacking the capacity to effectively represent the community, a democratic election process may be a good way for community members to select the people they trust to speak on their behalf (Box 5.2). However, one of the potential drawbacks of a purely elected process is that marginalized or vulnerable groups may not be represented in the end. For example, at the Ok Tedi mine in Papua New Guinea, village representatives were elected to participate in the mine continuation agreement working group; but in the end, all but one of the 152 village representatives were male, meaning that women were poorly represented.

The creation of development forums to represent qualified communities and stakeholders in the CDA negotiation and development process also helps to address concerns of internal divisions and development-led conflict, and the formation of "power elites." Even the best model of agreement bears the risk of these unintended consequences, as benefits may end up being directed at a few select groups, dissociating others from realizing benefits and having a voice in the decision-making process, and creating perceptions of bias and inequity. These problems need to be acknowledged and monitored to ensure that the benefits of CDAs reach all the qualified communities.

5.1.2 THE CRITICAL ROLE OF PARTNERSHIPS AND MULTI-STAKEHOLDER FORUMS

One of the primary conclusions of the research, workshops, and dialogue that preceded this Source Book is that **the establishment of partnerships and multi-stakeholder**

Box 5.2. Case study—Ghana

The CDA process for Newmont Mining's Ahafo Project in Ghana is driven by the community through the elected Ahafo Social Responsibility Forum. To determine the members of the Forum in a fair and transparent manner, the community first nominated, and then elected, representatives using secret ballot and a transparent ballot box. Representatives serve five-year terms, with a maximum of ten years of service in the Forum.

development forums is critical to the success of any CDA—no matter if the process is regulated or voluntary, or whether or not the final agreement will be signed with government or another representative body. Box 5.3 details examples of forums that have been integral to the success of past efforts.

While the establishment of some form of multi-stakeholder development forum has been shown to be one of the more successful ways of achieving community input, ownership, and commitment to the CDA process, a note of caution is warranted. The mandate and actions of the development forum—as for the broader CDA process—should fit within and work collaboratively with the broader policy and planning frameworks of the region/country. The tendency to limit input and benefits to select communities has, in some cases, resulted in substantial inequalities, inter- and intra-community conflict, unsustainable use of benefits, and a view of mineral wealth as a lottery prize to be won rather than a resource to be managed.

In the end, collaboration between all parties (government, industry, civil society, and communities) is an important part of the CDA development, negotiation, and implementation process. The use of tripartite and other multiparty agreements (which may be components within a CDA) can promote accountability between parties; however, involving too many parties can also hamper relationship building and the development of trust between groups.

5.2 Representation of Government, Industry, and Third Parties

A mining company may be the driver of the CDA process, as part of their corporate approach and in the interests of best practice and risk reduction. Alternatively, government may be the driver (or facilitator) of the process, taking responsibility for coordinating the involvement of various stakeholder groups, in the interests of establishing local benefits through an agreement, and/or as part of the applicable regulatory framework.

Box 5.3. Case studies—Ghana and Papua New Guinea

Ghana: A CDA for the Ahafo Project (Newmont Mining) was supported by the creation of the Ahafo Social Development Forum, which included representatives from a range of social sectors, including traditional community leaders, community groups (women, youth, etc.), regional government, and NGOs. Newmont supported participants with approximately two years of capacity development. Negotiations were moderated by a professor who was a known expert in the area, and legal advice was provided by a qualified lawyer.

The signatories of the Ahafo CDAs (including a Social Responsibility Agreement, Local Employment Agreement, and Newmont-Ahafo Development Foundation Agreement), which took approximately three years to develop and involved rigorous stakeholder engagement and capacity development, included: Newmont, two District Chief Executives, and the traditional local leaders from ten communities.

Papua New Guinea: The regulated creation of Development Forums for mining projects provides a mechanism for landowners and provincial governments to participate equally in decision making. The Development Forum process has integrated democracy into local resource development decisions, and has been largely successful in securing a greater level of community support for the mining industry, while ensuring a greater degree of development benefits for qualified communities.

In either scenario, mining companies should work with national, regional, and local governments (as appropriate) to ensure that the appropriate approaches are taken to match local context and requirements. In turn, government agencies (and other forms of community leadership) should support the company by providing fair and honest guidance, even if government will not be a signatory to the final negotiated agreement. All parties should endeavor to ensure that relevant communities and stakeholders are included in CDA dialogues and negotiations and that the process is open and transparent.

The roles and responsibilities of non-community stakeholders are discussed in greater detail in Section 3.3.

5.3 Phase 3 Outputs

At the end of Phase 3, the following resources have been developed:

- 3–A List of approved/elected stakeholder representatives (and how they relate to the qualified communities and stakeholder groups that have been identified)
- 3–B Mandate and vision for CDA negotiating bodies and/or multi-stakeholder development forum, if applicable

6. Phase 4: Implementation Issues and Feedback Mechanisms for a CDA

This section will discuss some of the key factors in negotiating and implementing the terms agreed within a CDA including the “potential to withdraw” clauses and the role they have to play in allowing communities a greater voice in negotiations; confidentiality issues and feedback mechanisms; and some of the important themes of social/community investment, which is ultimately the final aim of a CDA.

Box 6.1. One or multiple agreements?

A CDA may function as one agreement with several component topics (agreements on local procurement and hiring, social/community investment, etc.) or may be developed as several discrete agreements individually covering distinct subjects. In some cases it may be more successful to implement multiple CDAs, rather than relying on a single, overarching agreement. This can be the case, for example, where a development project impacts on regions that are culturally and politically distinct (such as a transnational pipeline), or where communities experience different impacts and have different needs (for example, communities along a transport route versus those located near to where a resource is being extracted).

Forming multiple agreements has the advantage of flexibility, but it can be very resource-intensive, in both the negotiation and implementation phases. Without an integrating structure there is a danger of inconsistency in approach across agreements, which can have detrimental consequences. For example, if one community or region perceives an agreement to be less generous than that of another group, this can damage relations with the project and fuel intercommunity rivalry and conflict.

Case Studies

The Ok Tedi mine in PNG dealt with this issue by implementing an umbrella process, involving all impacted communities, where broad principles and allocations were established, and community-specific agreements were then developed within this framework. Rio Iron Ore in Western Australia is using the same approach to negotiate new agreements with ten different traditional land owner groups. Newmont’s Ahafo project, however, provides an example of how multiple agreements can work to the advantage of the community and the developer. The approach at Ahafo was to define the key areas of mutual interest. While the various agreements reflect defined content areas, they are held together by a broader Social Responsibility Agreement, which outlines the roles and responsibilities of each party and the overall way in which the parties are to work together to implement key community initiatives.

6.1 Potential to Withdraw Clauses

Potential to withdraw clauses allow qualified communities and other stakeholder groups to step away from the agreement at any stage in their negotiation, prior to signing the agreement. It is suggested that the withdrawal rules be clearly defined. While withdrawal would clearly be a setback to the process, and there must be good faith efforts to conclude CDAs, this is an important clause that can improve the quality and transparency of the outcomes and improve the implementation process.

This Source Book has already discussed the gains to be made from initiating CDA negotiations as early in the mine development cycle as possible, so as to build relationships,

enhance the effectiveness of consultation and engagement processes, and manage stakeholder expectations. Early engagement can go a long way toward reducing risk and improving understanding between all parties. However, early engagement and negotiation of CDAs also requires a mutual understanding that *any and all* parties have the option to withdraw from negotiations; this alternative is a requirement of truly free participation within the agreement development process.

Companies may decide to abandon mineral exploration projects for various reasons, including if development proves financially unfeasible, thus putting an abrupt end to the CDA process. Governments may also decide to rescind support for a project through changing legislation or development priorities. Communities also need the opportunity to withdraw from the CDA process to ensure their independence and transparency, and to avoid the possible perception of power imbalances that may “force” an agreement.

The potential for stakeholders to withdraw is an important element of best practice for negotiating in good faith. However, while this mutual understanding may help to manage expectations during the negotiation phase, the potential to withdraw is only relevant during this time. Once a CDA is signed, all parties are bound to the terms of the agreement, which should clearly describe issues related to future termination, succession, and withdrawals from the agreement.

Box 6.2. Freedom to negotiate

Negotiations with stakeholders should be entered into in good faith on all sides; that is, conducted with an open mind, a willingness to engage in the process, and a genuine desire to build solutions and to reach agreement. Good-faith negotiations are transparent, considerate of the available time and resources of the negotiating parties, and deploy negotiation procedures and language that can be readily understood and agreed to by all parties. Some key principles of good-faith negotiations include:

- involvement of legitimate representatives;
- willing engagement free from coercion or intimidation;
- joint exploration of key issues of importance;
- equal access to the best available information;
- use of participatory approaches;
- accessibility in terms of timing and location;
- provision of sufficient time for decision making;
- mutual respect and sensitivity for cultural and other differences;
- flexibility, consideration of multiple options, and willingness to compromise documented outcomes; and
- inclusion of a grievance mechanism to address any issues arising in the implementation of the agreement

Source: IFC, 2007.

6.2 Confidentiality

As voluntary negotiated agreements, some CDA initiatives have tended toward confidentiality in order to maintain the privacy of sensitive financial (or other, such as traditional use/knowledge) information. In these cases the agreements are self-regulated by the signing parties, and communities are represented by their own associations or committees. The key driver for confidentiality in CDAs may be the desire to limit external parties' knowledge of the agreement or process (particularly such details as financial specifics, and conditionality) or to protect the ownership of the background information (e.g., traditional knowledge and use) upon which the agreement may be based.

However, transparency and contract disclosure are increasingly being pursued, and it is recommended that the CDA be made transparent to improve demand for accountability. A critical failure to apply confidentiality in the CDA process may be the absence of integrated review and evaluation, a critical process in CDA management which is discussed further in Section 7.2.

6.3 Grievance, Feedback, and Dispute Resolution Mechanisms

The implementation of grievance, feedback, and dispute management tools is a fundamental component of a successful CDA. Typically this will be managed through a grievance, feedback, and dispute resolution mechanism, which should provide a framework for interested stakeholders to raise and negotiate any comments or disputes related to the proposed development, the CDA, or the negotiating process itself.

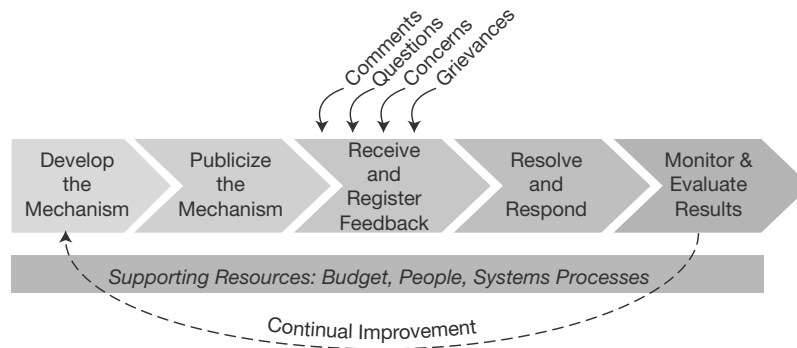
6.3.1 GENERAL PRINCIPLES

The key requirements for a best-practice grievance, feedback, and dispute resolution mechanism (here jointly referred to as simply a *feedback mechanism*) include:

- **Proportionality:** A mechanism scaled to the level of risk and expected adverse impact faced by affected communities.
- **Cultural appropriateness:** A mechanism designed in a culturally appropriate and locally relevant manner that takes into account appropriate ways to handle feedback.
- **Accessibility:** A clear and understandable process that is accessible (physically, technologically, linguistically) to all qualified communities and other stakeholder groups, at no cost.
- **Transparency and accountability:** A process which provides a transparent response or resolution to issues raised to all stakeholders.
- **Appropriate protection:** A mechanism that prevents retribution and does not impede access to other remedies of resolution.

These five basic principles should be applied through a simplified series of process steps: publicize the mechanism, receive and register feedback, review and investigate, respond

Figure 6.1. Basic feedback mechanism



and resolve, and monitor and evaluate.¹ Figure 6.1 illustrates the basic best-practice process for receiving and responding to grievances.

Existing best-practice guidance has been established by a number of international organizations, including broad principles of designing and managing feedback mechanisms. Sources include:

- *Good Practice Note: Addressing Grievances from Project Affected Communities* (IFC, 2009);
- *Human Rights in the Mining & Metals Industry: Handling and Resolving Local Level Concerns & Grievances* (ICMM, 2009);
- *Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (WBG, Compliance Advisor/Ombudsman, 2008); and
- *How-to Notes Feedback Matters: Designing Effective Grievance Redress Mechanisms for Bank-Financed Projects* (World Bank, 2011).

Feedback mechanisms are a useful tool to facilitate the receipt, processing, and resolution of, and response to, comments and complaints related to the CDA. An independent feedback mechanism acknowledges that all stakeholders have a voice in the process, and encourages trust and buy-in to the process. Case studies have shown that the effective use of a formal feedback process can help reduce risk and avoid disruption and discontent associated with the CDA.

Where possible, feedback mechanisms related to a CDA and its negotiation or implementation should align with broader project grievance mechanisms which have already been established. Having integrated, rather than overlapping, processes will improve effectiveness, reduce confusion, and avoid redundancy. To further improve local acceptance of a mechanism, mechanisms should respect (and, where possible, incorporate) local and traditional authorities and conflict resolution practices.

1. IFC, 2009.

6.3.2 INTEGRATION WITH CDAs

Drawing from the case studies and stakeholder consultation which was undertaken in the preparation of this Source Book, it is particularly important that the development and implementation of feedback mechanisms for CDAs be independent and accessible, provide multiple levels of response, show respect for traditional authorities, and include capacity building where necessary.

Feedback mechanisms are often established by mining companies as a key component of their social responsibility practices. However, independent feedback mechanisms should also be established as part of the CDA process, and they may have more capacity and flexibility to integrate and collaborate with similar processes under the developer, government, traditional authorities, and other structures. In addition, a grievance mechanism which is seen to be independent of the mining company may be better received by the full spectrum of stakeholders.

The **accessibility** to and participation of all communities and stakeholder groups, including marginalized or vulnerable peoples, should be thoroughly considered. Factors determining accessibility include language (*are all applicable languages included?*), literacy (*does the system assume that all stakeholders are literate, and is this a valid assumption?*), geography (*is the mechanism physically accessible to all stakeholders?*), and technology (*are computers or telephones required?*).

Depending on the degree of complexity of a project and its stakeholders, it may be appropriate to implement a **multilevel response mechanism** to prioritize feedback and grievances based on their severity and respond appropriately. While all feedback should be addressed in a timely and transparent manner, varying levels of response detail and urgency may be warranted. A multilevel response mechanism identifies the severity of the comments and grievances, and it prescribes a course of action based on the appropriate level. This can increase the overall efficiency of the system, allowing minor concerns or requests to be resolved quickly and locally, while more substantial grievances are elevated to the appropriate authorities. See Box 6.3.

Feedback mechanisms associated with CDAs should respect and, wherever possible, incorporate **traditional authorities** as well as existing conflict resolution methods/mechanisms. This can help increase the community's acceptance and use of the mechanism, thereby improving local buy-in to the CDA process and its outcomes. A thorough understanding of the local context and stakeholders will help ensure that relevant authorities and processes are identified and included in the development and implementation of the feedback mechanism.

Box 6.3. Case study: Argentina

Stakeholders familiar with the Valedero Project in Argentina suggest that Barrick Gold has maintained a well-founded reputation for always responding, regardless of whether positively or negatively, to any community demands, inquiries, or suggestions. A 100% response rate is facilitated by a multilevel response mechanism. This process in turn helps to generate trust between stakeholders promoting more constant dialogue, allowing for more strategic interactions and preventing unnecessary actions.

Finally, as for the rest of the CDA development process, **capacity building** should support the feedback mechanism, and its application, where needed. It may be necessary to address capacity constraints among both the end users of the system (e.g., community members and other stakeholder groups) and among those who are responsible for implementing the system and responding to feedback, so that roles, responsibilities, timelines, and processes are clearly understood and applied.

6.4 Community/Social Investment

A key component of a CDA will be the agreement and delivery of social investment projects with the qualified communities that have been identified. Although the implementation model may vary, a CDA should be seen as a tool for structuring and agreeing the details of targeted investment. CDAs can add genuine value to conventional social investment programs through the definition of the scope and ownership of development activities from an early stage, as well as by increasing community ownership of development activities.

Typically a CDA will include an agreement of select thematic focus areas for community/social investment. These may include topics such as improvements to health infrastructure and characteristics; improvements to education infrastructure and performance; and/or improved socioeconomic and livelihood prospects, and overall community well-being.

This Source Book does not seek to provide a list of successful or suggested topics or activities to include within the community/social investment components of a CDA, as it is once again important to consider the specific needs and context of the affected area. However, there are a few obvious recommendations to note:

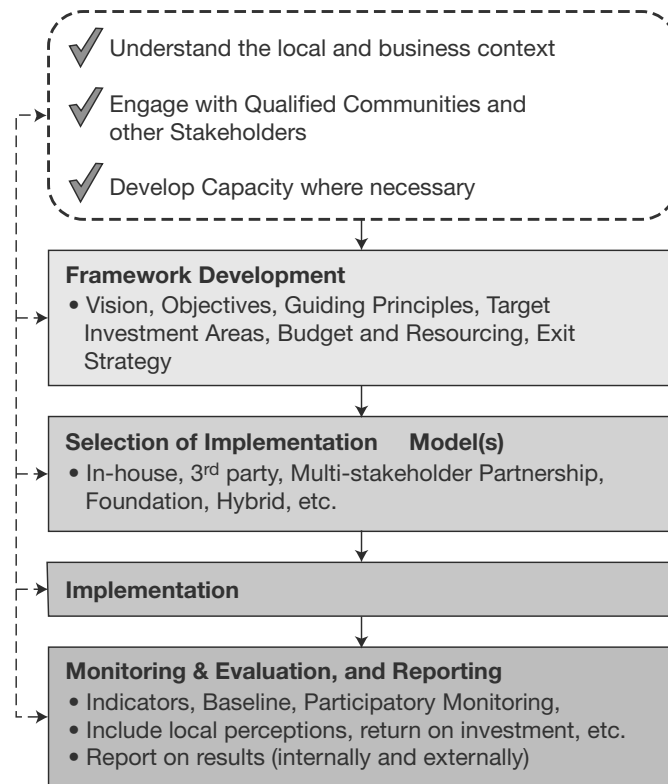
- Community/social investment should provide benefits and shared value to communities, governments, and the mining company;
- Investment should not be channelled to support illegal or immoral activities;
- Investment should not perpetuate marginalization, including economic, cultural, or other forms of marginalization; and
- As a general rule, investment should be issued to community or stakeholder *groups* rather than individuals.

6.4.1 GENERAL PRINCIPLES

Best practices for community/social investment require that investment programs should be applied through a simplified process of strategic planning, as presented in Figure 6.2.

Best-practice guides and practice notes are available from a number of agencies and provide further discussion of the principles and approaches for social investment. Social/community investment activities that are included in a CDA should, wherever possible, follow this guidance. One of the most comprehensive sources of guidance in this area is *Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (IFC, 2010). Whilst directed at the private sector, this handbook is a

Figure 6.2. Planning for community/social investment



Source: Adapted from IFC (2010).

good reference for government and community stakeholders seeking to better understand the core principles of and approaches to strategic investment.

Further considerations for community/social investment within the CDA development process are highlighted in the following sections.

Collaborative multi-stakeholder strategies

The CDA development process enables all stakeholder groups to collaborate to co-develop more sustainable community/social investment processes. The nature of CDA engagement and negotiations requires multiple stakeholders to collaboratively define the objectives and criteria for investment activities.

Multi-stakeholder discussions during the development of a CDA should include a defined strategy and should plan for the incorporation of the priorities of the various stakeholder groups. By identifying key priorities in the short, medium, and long term, the overall strategy for community/social investment can be coordinated with relevant local plans and policies and other aspects of the local context. In this way, program direction will remain clear, outcomes will be maximized, and ad hoc demands, wants, and needs will hopefully be avoided.

Local ownership

CDA discussions allow communities, governments, and companies to take ownership of their role in the development agenda, thus reducing potential dependency and increasing the sustainability of investment activities. Roles and responsibilities should be clearly defined, and the performance of all parties should be transparent and monitored.

In order to foster local ownership, CDAs should be set up to include (or build toward) some form of investment management committee that represents all relevant stakeholders. This committee will foster local ownership of development issues, overseeing the management of investment funds and the application/selection process by which investment projects are determined.

Defined scope

A critical function of CDAs is to allow stakeholders to agree on the strategic parameters for community/social investment. The ongoing engagement process should provide a good sense of the priority areas for all participants.

One of the key outcomes of the CDA development process should be the participatory determination of the screening criteria for the investment program. These factors should be designed to limit the selection of investment projects to those which meet the established objectives of the program. Screening criteria might include eligibility criteria defining the stakeholder groups that may benefit from the program; specific investment areas that will be targeted; specific approaches that have been approved or recommended; concurrence with local priorities and existing plans and policies; and budgeting (including the allocation of funds to various target areas/priorities). Clarifying the types of activities to undertake, and the way they will be designed and implemented, is beneficial to the desired outcomes sought by stakeholders. The participatory nature of the CDA development process provides an opportunity to formalize these parameters in a participatory and transparent manner.

Participatory needs assessment for investment

Participatory needs assessments are discussed, with respect to capacity development, in Section 4.1.2. The same principles can be applied to the participatory determination of community/social investment priorities.

A participatory needs-based approach to community/social investment can help identify existing resources and assets within a community or stakeholder group, as well as opportunities to leverage or build upon these strengths to meet their development goals. Typically, a participatory assessment will include:

- An assessment of the local context in reference to potential community investment (e.g., demography, livelihoods, institutions, services, infrastructure, health and education, and so forth);
- The identification of groups and subgroups within the community (e.g., how they interact; differences in perceptions, interests, issues, and priorities; how these may conflict or converge);

- The identification of community strengths or assets (e.g., what can the community contribute, and what role can it play in driving its own development?); and
- Active facilitation to ensure all voices in the community are included in the decision-making process (i.e., so that the agenda is not driven by the most vocal or influential persons in the community).

A participatory needs assessment will look to the potential recipients of investment to identify their own strengths and weaknesses, building on the investment goals and priorities which have been established. Through the needs assessment process, the community ensures that their actual “needs” are addressed (rather than immediate, and potentially impulsive, “wants”), and that existing assets and opportunities are utilized to their full advantage. With the increased community ownership of the investment program, the overall sustainability of both the program and its achievements is also improved.

Additional notes

The importance of capacity development within the broader CDA development strategy has been emphasized throughout this Source Book. It is also important that stakeholder capacity be supported and developed as needed, so that participants can contribute effectively to the development and implementation of community/social investment programs.

Another topic that is typically included within a CDA is the local procurement of goods, services, and labor for a mining project. Procurement targets and strategies may also be included in community/social investment programs. Alternatively, investments may address gaps in skills, knowledge, and experience to enable local populations to better participate in and benefit from procurement opportunities. The development of local capacity will provide long-term, sustainable benefits, which can apply beyond a single project or industry.

6.5 Phase 4 Outputs

During Phase 4, where the CDA moves from negotiation to implementation, the following resources should be developed and agreed:

- 4–A Feedback mechanism
- 4–B CDA clauses: Strategic aims of investment activities
- 4–C CDA clauses: Management board for investment activities
- 4–D CDA clauses: Parameters for community investment
- 4–E CDA clauses: Local procurement
- 4–F Participatory Needs Assessment for Investment
- 4–G Capacity development targeted toward community investment

7. Management, Budgeting, Monitoring, Assessment, and Sustainability

Once CDA negotiations have been completed and an agreement has been endorsed, the implementation phase is critical to the success of the covenant and the delivery of benefits to affected communities.

This section highlights some of the key concepts to consider to ensure that the implementation framework is robust and transparent and that funds reach the intended parties (e.g., qualified communities). Planning and risk analysis should include consideration of the priorities and capabilities of government and other institutions, political influences, whether there is a history of corruption in the area, and the transparency of existing systems.¹

Mineral resources are often controlled at the national level, rather than at regional or community levels. As such, it is important to ensure that benefits not only trickle down to the local level, but also are perceived to do so. Even where mineral wealth is managed at sub-national levels, it is important to avoid the perception that power elites control the resources and benefits.

The establishment and use of community or private-sector foundations, trusts and funds—to implement CDA initiatives and allocate money to specific projects—is one of the means to achieve the above objectives and to help to attract partners and external funding and to promote community participation in management and decision making (Box 7.1). In addition, this model of CDA management can help potential benefits to extend to a broader regional or national level, or help industry to separate legal liabilities.

Box 7.1. Foundations, trusts, and funds

The mining sector typically uses foundations, trusts, and funds (FTFs) for three main purposes (below). Each FTF should correspond with only one of these purposes, not a combination.

1. **Government Payments:** Government may collect funds from mining companies through taxes, royalties, voluntary contributions, revenue sharing, or other payment schemes. All or parts of these funds are typically intended for redistribution to qualified communities, which may be accomplished through an FTF structure.
2. **Compensation:** Payments made by mining companies to compensate or offset impacts generated by a project may be channelled through FTFs.
3. **Community Investment:** Voluntary contributions made by a mining company, beyond the scope of a project's impacts or normal business operations, may be implemented through an FTF structure.

There is no “ideal” structure or composition of an FTF, as each must be appropriate to the local context. However, all FTFs should have a clear vision, a multi-stakeholder governance/management body, transparent and accountable practices, flexibility, high levels of collaboration, efficient administration and delivery structures, impact-based monitoring and evaluation, and an endowed fund to support program sustainability.

Source: World Bank (2010a).

1. World Bank, 2009.

Other potential implementation structures include partnerships with local government agencies, or the establishment of Regional Development Councils or other administrative structures. The selection of an appropriate implementation mechanism is a critical decision and should be carefully analyzed based on the local context, capacity, and project objectives.

Accountability and transparency issues are further discussed in Section 7.3.

7.1 CDAs and Budgeting

Budgeting for the development of the CDA process, the implementation of the agreement, and any subsequent community investment activities, can be a challenging task. Specific funding amounts are sometimes dictated by legislation and may be collected by the government through taxes and royalties. In some countries, it might be stipulated that all or part of these funds must be redistributed at a local level. In others, mining agreements or contracts identify funding amounts and how they should be transferred to specific communities or initiatives. However, these parameters are also often undefined and left to industry, governments, communities, and other stakeholders to determine on a case-by-case basis.

Given that voluntary revenue-sharing systems can be complicated and potentially erratic, CDAs provide an opportunity for all stakeholders to be involved in the establishment of clear and transparent mechanisms for managing and regulating the allocation of funds. These mechanisms can add much needed clarity to the allocation and management of funds over the long term, improving accuracy, transparency, and the sustainability of development activities.

Successful budgeting of a CDA relies on strategically planning and implementing expenditures around certain development areas to maximize community benefits. Ideally, CDA budgeting and expenditure management should be linked with existing local and regional development plans and defined early in the process. Government should consider how to best collect and apply funds for community development, and how to integrate this process with other government plans and programs. Industry should make efforts to include CDA budgeting, including administrative and management costs as well as development expenditures, within broader mineral exploration and development budgets to more clearly plan and manage the financial component of CDA development.

7.1.1 DESIGN PRINCIPLES

The design of financial implementation structures should be simple, cost-effective, and accountable, and should ensure that:²

- The mechanism is tailored to the local context, including considerations regarding local political structures, institutions, and capacity;
- Funds should flow smoothly and predictably from the source (e.g., mining company, government) to the parties involved in implementation (e.g., communities, boards/foundations, government, NGOs); and

2. World Bank, 2008.

- Information on the disbursement and implementation of funds should also flow freely between all parties involved in implementation, as well as other community members and stakeholders.

The mechanism should also define whether funds will be allocated through government channels, private sector channels, or a combination. This will depend on the services and capacity available locally, including local regulations, financial institutions, geographic coverage, and other factors.

To increase the likelihood that funds will be disbursed quickly and efficiently, a clear and simple financing agreement should be developed, including a comprehensive list of projects, sub-projects, and activities; schedule; estimated costs; sources of financing (including cost-sharing, if relevant); estimated benefits; and roles and responsibilities. Clear agreements should also be established with banks and other intermediary agencies.

Finally, an appropriate financing model should be defined. Typically, payments may be based either on a lump-sum model or actual costs. The former is beneficial for situations in which there are a number of small projects, where communities usually participate in the selection of projects based on predetermined criteria. In contrast, the use of actual costs is more appropriate for more complex projects and those where the costs are difficult to estimate in advance (e.g., large infrastructure projects).³

7.1.2 SUSTAINABLE BUDGETING

Sustainable budgeting of a CDA should include active preparation for its management, and the management of any related development initiatives, post-closure. This may include proportioning financial inputs toward future funding procurement, capacity development surrounding grant-making, and longer-term corporate social responsibility investment post-closure.

The establishment of CDA community investment on a sustainable path, mirroring a broader donor development fund, would be a means to improve the long-term sustainability of CDA benefits. However, the earmarking of government funds for local community development initiatives is certainly a viable alternative. The relative roles of government and the private sector, in terms of local development, are discussed in Section 5.3.

7.2 Monitoring and Evaluation

Appropriate monitoring and assessment of CDAs has the potential to increase accountability and transparency as well as to improve the benefits delivered by the CDA. However, this is dependent on the establishment of appropriate metrics, monitoring techniques, and an assessment schedule.

Monitoring CDAs solely on metrics such as “percentage of mining earnings distributed,” “dollars spent,” or “programs initiated” will not contribute to the long-term sustainable

3. World Bank, 2008.

development goals at the heart of a CDA. While administrative metrics are a valuable way to measure the actual versus planned implementation status of CDA initiatives, such metrics do little to evaluate the overall impact of the CDA on the affected communities. Thus, it is recommended that CDA monitoring programs include broad development metrics, such as the UNDP's Human Development Index (HDI), to gauge the impact of a CDA on a community or stakeholder group.

Even with the appropriate metrics, monitoring is only useful if it contributes to ongoing evaluation and, subsequently, to inform improvements to CDA initiatives. The documentation, monitoring, and evaluation system incorporated within the CDA should provide feedback to the broader process, allowing for improvements between initiatives. The establishment of a *Monitoring and Evaluation Unit* to review CDA and community development initiatives can be a valuable way to promote this feedback loop. This unit would compile concise, regular (e.g., monthly) reviews, as well as more rigorous quarterly reviews, of all CDA programs. Third parties, such as local NGOs, can support the system by providing feedback on behalf of beneficiaries. In this way, initiatives can be better assessed according to the actual benefits they are providing.

Past experiences and best practices indicate that the review process should involve representative community groups in combination with independent moderators. This provides stakeholders with an independent and participatory opportunity to amend and improve a CDA; if adjustments are needed, both parties must negotiate changes and come to a new agreement.

Finally, if government agencies are not parties to the CDA, they may be in a position to provide appropriate levels of oversight and monitoring. Where appropriate, government authorities may also be well placed to prescribe corrective action if the objectives of CDAs are not being met, or if one or more parties are inhibiting the success of the CDA.

7.3 Accountability and Transparency

There are always concerns about making direct payments, whether this is through managed funds or via federal government or even local government. In some cases companies have complained of funds being diverted to areas outside of the operational footprint, or of funds being spent on projects which do not directly address local needs. Tracking funding allocations and disbursements can help to alleviate concerns regarding accountability and transparency of payments. See Box 7.2.

To manage issues of accountability and allegations of corruption, it is important to pursue transparent financing, contracts, payments, and expenditures related to the CDA. All

Box 7.2. Case studies in transparency

In certain countries, such as Peru, Colombia, and Papua New Guinea, it is stipulated that some part of taxes and/or royalties generated by a mining company must be redistributed at a local level. In other countries, including Guinea, state mining contracts and agreements specify the amount and how funds should be transferred to impacted communities. Where these payments are made directly to federal or central governments, this is often an attempt to ensure the transparency of community development initiatives.

signatory parties should agree to make financial records publicly available to boost the accountability of any financial investment.

In addition to public records, CDA signatories should plan and agree upon a schedule and an approach to auditing checks and balances. An *audit committee* should be defined and agreed upon prior to the finalization of a CDA, and auditing should be a conditional clause on any award-of-funding agreement. An audit committee should include independent representatives from government, an external representative of the company, and (where available) an independent representative of a relevant third party (e.g., NGO or donor agency). A committee such as this would have a mandate to ensure transparency and accountability by regularly reviewing CDA financial activity.

7.4 CDA and Local Economic Development Plans

Incorporating CDAs within the context of other regional, national, and local development plans, split over a variety of timeframes, is critical to their success.

It is important to remember that a CDA is *not* intended or designed to replace or replicate government development initiatives, and it should wherever possible align with and complement existing government, NGO, and other plans or programs.

Beyond a rudimentary literature review of key strategies and policies, CDA practitioners and government policy makers should also look to make a series of changes to integrate CDAs within their local and regional development context.

The inclusion of the full spectrum of government within the engagement process is critical to understanding strategic opportunities for cooperation. Wherever possible, engagement for CDAs should consider not only relevant government agencies, but also qualified communities and other stakeholder groups. Ultimately, however, local and regional government should play a role in co-developing the strategic foci for CDA initiatives to ensure that CDAs fit within the existing development context. See Box 7.3.

Another central concept to promote the integration of CDAs within local economic development contexts is the need to build the capacity of local government in addition to that of community members, local organizations, and other stakeholder groups. It should be noted that in many emerging economies, local and regional governments may suffer from shortages in capacity that can impact their ability to proactively plan for ongoing sustainable development. Targeted capacity development exercises with relevant government officials

Box 7.3. Case study of Papua New Guinea

In Papua New Guinea, many of the most significant mining operations are located in remote areas where government services suffer from reduced resourcing and capacity. These conditions weaken the framework for a CDA and ultimately mean that without the skills and expertise to provide the supporting services, a CDA may fail to provide sustainable benefits. The priority for local over broader regional or national interests in the distribution of royalties, equity, and infrastructure development has tended to promote inequitable patterns of development.

will help to build awareness of the CDA as well as improve the abilities of government representatives during CDA implementation and planning.

7.5 CDAs and Closure Planning

Common to all community development initiatives, CDAs have the potential to promote dependency on mineral resources for participants within the development process. This dependency can result in broader socioeconomic risks and impacts and increased sensitivity to change for communities, resulting in serious impacts to quality of life when mineral benefits are removed.

To combat this potential dependency, the CDA process needs to address the implications of closure planning and potential cessation of community development initiatives from the outset. Any community development initiatives should explicitly include a robust exit strategy that includes capacity building, the progressive and transparent transfer of authority, roles and responsibilities, benefits, and ongoing monitoring and evaluation.

Multiple resources, toolkits, and guidance documents provide comprehensive information on best practices concerning mine closure, such as ICMC's *Planning for Integrated Mine Closure Toolkit*, and the *Towards Sustainable Decommissioning and Closure of Oil Fields and Mines* (World Bank, 2010b).

7.5.1 CDAS, CLOSURE, AND LOCAL DEVELOPMENT PLANS

As discussed in the previous section, the integration of mining projects into wider regional development plans can be an effective way to reduce community dependence on mine-derived development. In a worst-case scenario, typical foci of private sector development (such as education and health) might be delegated to a mining company, thus creating high levels of dependency and low sustainability, especially upon decommissioning and closure. CDA practitioners should actively consider these potential pitfalls during the planning phase and plan for handover and management by integrating with government and local development plans and aligning CDA development initiatives with government services.

In addition, to facilitate the ongoing functioning of CDA development initiatives post-closure, the early involvement of locally active NGOs can help to build longer-term partnerships. This gives NGOs the opportunity to buy into an ongoing development process, facilitating the development initiatives already underway.

7.5.2 CDAS, CLOSURE, AND CAPACITY DEVELOPMENT

The importance of ongoing capacity building to ensure that development gains established during the life of the CDA are continued cannot be understated. Targeted capacity development to ensure that management boards, foundations, or forums can continue to administer a CDA and the associated development initiatives after mine closure can be critical to their sustainability.

7.5.3 CDAS AND FUTURE FUNDING

For all the benefits that CDAs can deliver, often they are ultimately dependent upon financial inputs from mining companies (and potentially government) for their continuation. Stakeholders consulted as part of this study agreed that CDAs and their development initiatives would work in an improved and more sustainable manner if initial provisions had been made for grant-making and attracting future funding from other sources.

Ensuring future funding availability may include the proportioning of financial inputs during the life-of-mine toward the long-term financing of the CDA management. Other measures may include the development of reinvestment clauses, boosting funding available for the administrative running of the foundation, and attracting further funding and soliciting NGO services. Other sustainability measures may be to develop CDA management capacity with respect to fundraising and enhancing the involvement of NGOs from an early stage.

In some circumstances, the mining industry may want to continue to make philanthropic payments (in the interests of corporate social responsibility, and scaled down over time) after relinquishment has occurred, so as to continue to fund CDA management.

7.6 CDAs and Project Standards

The development of CDAs should not detract from the compliance of a project or company with other initiatives to increase the development performance of mining projects, or local and national government initiatives. On the contrary, project-specific CDAs should build on existing legislation, industry standards, and guidelines, such as:

- World Bank Operational Policies;
- IFC Performance Standards and related guidance documents;
- The Equator Principles;
- ICMM Principles;
- Voluntary Principles on Security and Human Rights; and
- Any other applicable national policy or international guidelines.

At a project level, a simple gap analysis of CDA requirements in relation to existing project-specific guidelines and standards will encourage consistency and facilitate the use of well-established best practices.

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