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ENGENDERING COMMUNITY PARTICIPATION OR CONTESTATIONS? EXAMINING THE MANDATORY COMMUNITY DEVELOPMENT AGREEMENT IN THE EXTRACTIVE SECTOR OF SIERRA LEONE

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ABSTRACT

The African Mining Vision has engendered the introduction of mandatory community development agreement (CDA) into the legal framework of some countries in Africa. In 2009, Sierra Leone enacted the Mines and Minerals Act that obligates mining companies to invest in host communities. The study focuses on the Sierra Rutile CDA program's case in Sierra Leone. Extant scholarly works have largely explored the resource curse and voluntary corporate social responsibility. There are limited studies to unravel the new mandatory community development agreement. Thus, the purpose of this study was to examine the CDA in Sierra Leone. The results show that the CDA has engendered a consistent fund for community development. It has also empowered ordinary members of the community to determine the development program. However, it has created a new ground for contestations between the pre-existing local governance structure (traditional authority) and the newly created community development committee (CDC).

Keywords: *Community Development Agreement, Impact, Sierra Rutile, Mandatory*

INTRODUCTION

Many African countries are undeniably endowed with natural resources. Despite their potential to improve the socio-economic conditions of their citizens, natural resources have not always had a positive impact on many countries. Resource-rich countries have instead been beset by conflicts, civil wars, and the Dutch disease (Arthur, 2014, p. 60). Since the 1990s MNCs developed the corporate social responsibility (CSR) approach to either pressure public anger or promote a public relation. Most CSR intervention does not necessarily address the major socio-economic problem in the affected communities. In an attempt to address this resource curse, the African Mining Vision was adopted.

The Africa Mining Vision (AMV) as a model for Africa's governance of natural resources was adopted by African Heads of States in February 2009. It has become the framework for developing the natural resource in the continent getting used by many African countries to reform their mineral policies, legal and regulatory frameworks and to harmonize their mineral policy strategies (Pedro, 2016). The key objective of the AMV is to promote "Transparent, equitable and optimum exploitation of natural resource to underpin broad-based sustainable growth and socio-economic development" (African Union, 2009). Meanwhile, since the middle of the 1980s, about 32 out of the 124 countries with mining sectors have globally enacted or modified community development agreements in their mining laws. This new phenomenon requires mining firms and the government to embark on socio-economic development in the communities in the mining areas (Dupuy, 2014, p. 201).

Sierra Leone enacted the Mines and Minerals Act in 2009. The Act makes provisions in Part XVI for Community Development. Mining companies are mandated in developing the communities where they operate. The mining companies must have a Community Development Agreements with Primary Host Community (PHC) if mining firm has an output of more than 1 million cubic meters per year from alluvial deposits, or for underground mining operations. The company must spend no less than one percent of the gross revenue amount earned by mining operations in the previous year. Terms of the CDA must be negotiated with the community and should address: social and economic contributions that the projects will make to the sustainability of the community; assist in creating self-sustaining, income-generating activities



such as the production of goods and services needed by the mine and community; consultation with the community regarding mine closure (Dupuy, 2014, p. 211).

The CDA is 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. A CDA is considered to be "successful" when it achieved a stable base of local support for the project and has contributed to local socio-economic development (World Bank, 2012, p. 10). In contrast to the non-mandatory CDAs, legally mandated CDAs have the potential to enhance the redistribution of benefits from the mining companies toward improving the lives of the community people that are affected by the mining (Nwapi, 2017, p. 203).

However, since the Act came into effect in 2009, large and small-scale mining companies in Sierra Leone only started the implementation of the CDA in 2016. Since the CDA was introduced, there have been contestations between the preexisting local governance structure and the newly created community development committee. Traditional authority perceives the CDA as a scheme that aims at undermining their entrenched "custodian authority" by given substantial power to the CDC. There is no nexus between the CDA and the Local Council development plan. Members of the CDC are grappling with project management, procurement, and reporting skills. Existing scholarly works have largely focused on the resource curse and voluntary CSR. There are limited studies to unpack mandatory CDA in mining host communities. This study, therefore, examined CDA in Sierra Leone. A case study of the Sierra Rutile mining company was employed. The paper is structured into three sections. Section one explores the existing CDA debates. Section two provides a background of the CDA in Sierra Leone. The third section presents the main findings of the Sierra Rutile CDA program and offers concluding remarks.

EMERGING COMMUNITY DEVELOPMENT AGREEMENTS

Globally, the Community Development Agreements (CDAs) are becoming gradually common within the mining sector. In another context, such agreements are referred to as the Impact Benefit Agreements, the Community Benefits Agreements, Memorandum of Understanding and Local Development Agreements. These agreements are considered as opportunities to make sure that mining leads to the development of local communities that are affected by the activities of mining (Nwapi, 2017, p. 203). Sierra Leone is among several countries (Kenya, Guinea, Mozambique, Nigeria, South Sudan) that have introduced the CDA provisions into law, mandating small and large-scale mining companies to go into agreements with their PHCs (Nwapi, 2017; Dupuy, 2014).

However, Nwapi (2017, p. 213-214) argues that the natural resource regimes in some of the countries have not adequately addressed the issue of how to identify communities that are qualified to enter into CDAs with mining companies and the representation of community actors in the CDAs program. This is what Conteh and Maconachie (2019, p. 233) assert in their study of Sierra Leone CDA that the legal framework of the country's Act of 2009, section 138, capture a particular term, Primary Host Community that underpins the process of 'inclusion' and 'exclusion' and of 'winners' and 'losers' in communities that are either directly or indirectly affected by the operations of mining companies irrespective of their location. Nwapi (2017, p. 208) contends that by limiting the rights to decide what constitutes the PHCs by the Local Council and mining companies, the Act of 2009 takes away the rights of the mining-affected communities to involve in the decisions that would have an impact on their livelihood.

Loutit, Mandelbaum, and Szoke-Burke (2016, p. 66-69) maintain that many of the mining agreements have provisions that make part of or all highly confidential, which constrains the ability of researchers to get hold of the full texts of the agreements. They argue that many mining companies' agreements do not make provision for the pre-negotiation with the affected communities that would create a platform for earlier negotiations. The decision-making responsibility in the community is largely dominated by the mining companies despite the increased trend demand of community actors to be fully involved in the management



of the mineral resources. As it is, most of the agreements do not make provision for the implementation and monitoring of the CDA (Loutit, Mandelbaum and Szoke-Burke 2016, p. 90).

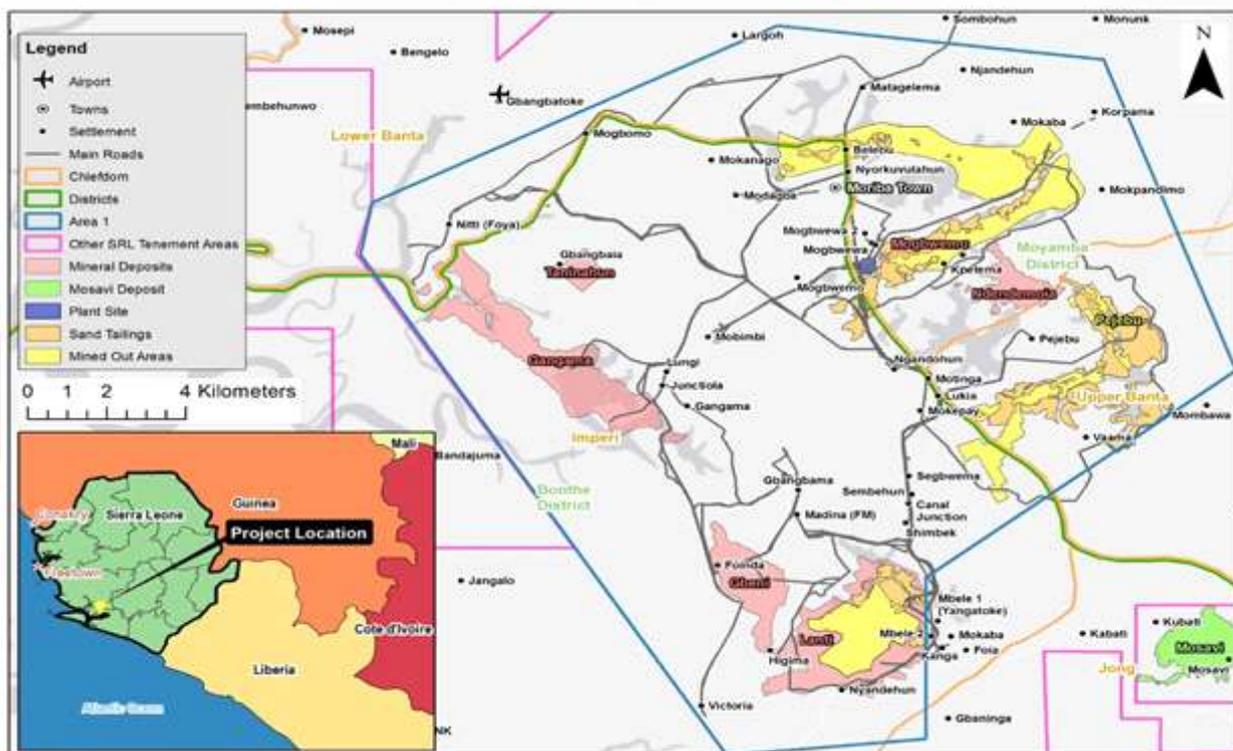
Dupuy (2017, p. 69) argues that a handful of community development in mining laws necessitate revenues from the operations of mining, such as taxes and royalty, to be allocated into funds and directly distributed back to communities that are affected by mining operations for socio-economic development. While these funds have been created with good intentions, their ability to elevate mining affected-communities through social service, infrastructure provision, and increased incomes are constrained by local power dynamics. Fanthorpe and Gabelle (2013, p. 73-75) assert that the level of community understanding of the CDAs is entirely important to avoid elites captured of the process; who can be the only ones that have an understanding of the terms of the CDA. Mining host communities are at a major disadvantage considering the low levels of rural education, the power of chiefs that resonates with the people and lack of information that prevent them from making decisions.

METHODOLOGY

The utilization of a case study method was apt for this study. It helps the researcher to relate to the communities that are affected by the operations of the mining company (Yin, 2014). Case studies can do more than generate theoretical ideas. They can test theoretical propositions, and they can offer persuasive causal explanations (Rueschemeyer 2003, p. 318). The study employed interviews and field observation techniques to explicate the dynamics of the CDA program. A total of 15 respondents-government officials, NGOs/CSOs and community stakeholders were interviewed. Sierra Rutile mining company was selected as a case study.

Its operational area covers two districts: Bonthe and Moyamba within five chiefdoms: the Imperi, Jong, Bagruwa Upper Banta and Lower Banta Chiefdoms with a single CDA program.

Figure 1: Sierra Rutile Area of Operation: Locality Map for SR Area 1 SRK Consulting: Project No 515234 Sierra Rutile Limited.





COMMUNITY DEVELOPMENT AGREEMENTS IN SIERRA LEONE

In Sierra Leone, the process of designing the CDA was as contentious as it was exclusionary. The mining-affected communities were not directly represented in the Working Group, and the political intrigues that happened during the negotiations demonstrate the challenges involved in such policy processes. It was apparent that the interests of some of the actors were completely conflicting to others, which seriously undermined the progress in developing the agreement and its final implementation (Conteh and Maconachie, 2019, p. 234). Members of the community are not well-informed regarding the status of mineral rights, the actual determination of the compensation payments linked to resettlement activities, access and use of land, benefit-sharing systems and the preparatory processes of environmental and social impact assessment (GoSL, 2018, p. 23).

The provisions of the CDAs in the Act of 2009 is concurrently "inclusive" and "exclusive", requiring mining companies to support communities that are affected as a result of their operations, at the same time, establishing an exclusion clause that confines companies' support to communities in 30 kilometers on their area of concessions. This inconsistency offers room for possible conflicts in mining areas (Conteh and Maconachie, 2019, p. 239).

Local communities cannot influence policy and governance of the minerals sector. Moreover, the relationship between communities and mining companies is complicated. This is not unconnected to the destruction caused by largescale mining operations to land extensive peasant economies; low demand for unskilled labor in large scale industrial mining operations; the recurring fear of communities that their political representatives are more interested in soliciting bribes from the mining companies than seeking their interests and the indisputable fact that communities have experienced very few direct benefits from mining (Fanthorpe and Gabelle, 2013, p. 54-55).

Despite the broad-based nature of the CDC executive, its formation by the government agency lacks transparency. This is emphasized by the Network Movement for Justice and Development, Head of the program that: "Even though we are one of the organizations behind the formation of the CDA as part of the Technical Working Group, we were hurriedly kicked out of the process during the formation of executive members in communities." This is not unrelated to the strong position against the National Minerals Agency (NMA) over the unfair nature of the election process. In some cases, to cast blame on NGOs' absence during the elections of the CDC executive, the NMA informed NGOs at the eleventh hour knowing fully that the invited NGOs would find it difficult to be there due to the impromptu invitation.

There is a lack of harmonization of the CDA and Local Council development plan. There is no nexus between development projects carried out by mining companies either within the CDA or the Community Development Action Plan (CDAP) or following CSR principles on the one hand, and development projects carried out by Local Councils within the Local Development Plan. These overlaps have created duplication of development efforts in some cases and even allowed for corrupt practices in others (GoSL, 2018, p. 44). There is no link between the CDA and the Local Council development plan (Interview with the Chairperson Parliamentary Oversight Committee on Mining, March 2019).

The legal and policy framework does not describe the roles and responsibilities of local actors in managing development at the community level. There is a tense relationship between Local Council authorities and Chiefdom Administration in the use of development funds that could undermine the effective implementation of projects (GoSL, 2017, p. 17). The Legal Advisor of the Ministry of Mines noted that "there is a disconnect between the Local Council and the community development plan. However, the new Mining Policy of 2018 proposed that the Development Planning Officer (DPO) of the council must be a member of the CDC to help with the designing and implementation of projects."

The process of establishing and carrying out the CDA has remained a disputed site shaped at an array of levels



by politics. The decision-making process for the PHCs was largely dominated by the same elite actors who previously dominated "spaces" for community development, excluding ordinary citizens. On the contrary, while international and local civil society organizations continued to urge companies to reallocate wealth among the communities affected by their operations, mining companies either did so reluctantly or refused to do so in a dire economic environment in which the government was generous to them as a means of attracting and retaining investments. The government lacks the power to hold companies accountable to honor their commitments to PHCs. This has made the situation critical and is undermined by the actions of politicians (Conteh and Maconachie, 2019, p. 239).

Sierra Rutile Community Development Agreement

Even though the Mines and Minerals Act was enacted in 2009, Sierra Rutile Limited (SRL) only started the CDA in 2016. The SRL, which until 2015 had been allowed by the NMA to spend its community development funds through the foundation has been engulfed in disagreement with the PHC, although it has not stalled its implementation. While the Company paid its 2016 and 2017 CDA contributions, it retained the 2015 payment. This was due to confusion surrounding a sum of US\$ 75,000 paid from the foundation's account to unknown beneficiaries for project implementation, which occurred after the NMA had placed a moratorium on the use of community development funds until CDAs were signed (Conteh and Maconachie, 2019, p. 238). This was accentuated by the CDC Chairperson during an interview, noted that, in 2014, the NMA passed a resolution that SRL should not place any fund into the foundation account until the CDA comes into effect. However, this was blatantly ignored by the company and thus US\$75,000 was unaccounted for. From every indication, this money has been exploited by personnel of the company, some chiefs and government officials.

The CDA has engendered a new ground for contestations between the traditional authority and the ordinary members of the community. Though the Paramount Chiefs (PCs) are part of the CDC, the Act prohibits them to serve as the chairperson. As it is, an ordinary member of the community is elected as chairperson of the committee. This has created strong resentment from the PCs as it is considered to undermine their authority. The CDA fails to take into account that PCs are the "custodian" of the land and thus every development at the chiefdom level must be within our purview. (Interview with PC of Lower Banta Chiefdom, February 2019). He also advanced that, "the chairperson of the CDC in SRL shows no respect for my authority." At the time of this research, the PC was on suspension on allegation of misuse of community development funds.

The less than one percent of the CDA fund captured by the Act is inadequate to implement a sustainable project in the five chiefdoms where SRL operates with a single CDA program. Most of the respondents noted that the company should have increased the CDA fund considering its massive destruction to the environment. The Community Affairs Manager of SRL noted that "the company is bound by statutory regulation and thus can only increase fund if it is in the law." From observation in the community where funds have been distributed, some projects have been implemented with substandard materials. A school building constructed in Imperil Chiefdom less than one year ago has dilapidated.

The issue of a low level of education in the mining-affected communities is a major challenge toward the implementation of the CDA. There is strong pressure from the local authority to get direct involvement in the activities of the CDC. The chairperson of the CDC was directly attacked following his strong defiance against the misuse of the CDA fund by the local authority that wanted to engage on 'business as usual.' When the CDA fund was first paid into the account, some politicians and chiefs urged me to distribute the money without any identified projects. When I stood up strongly that this time around, the money must be used to benefit the affected communities, I was attacked by "secret society men" who were allegedly instructed by the chiefs. I had to leave the community for a certain period as a result of numerous death threats (Interview with the CDC Chairperson in Sierra Rutile, February 2019).



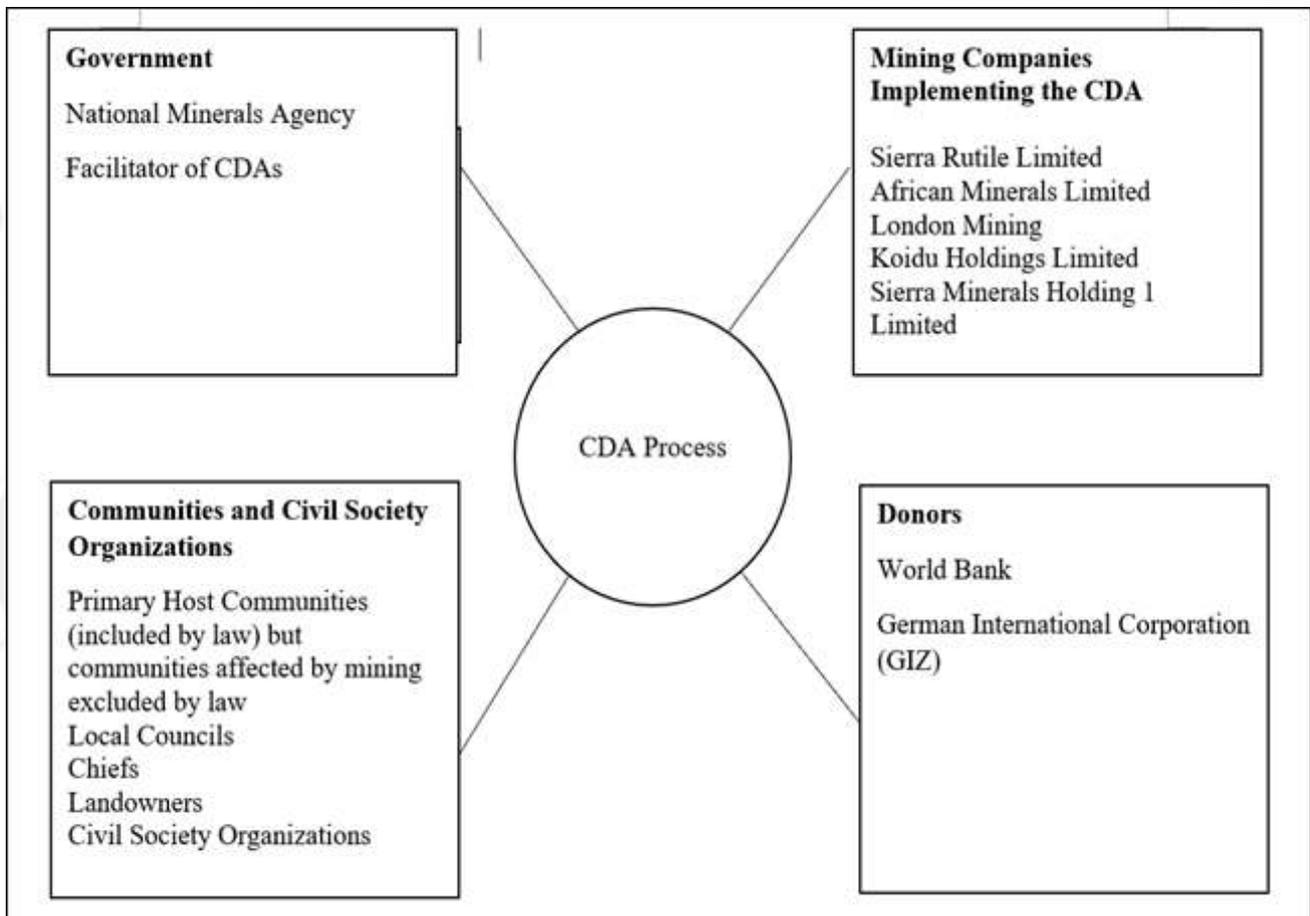
Community Development Committee Structure

The CDC was established to manage the fund provided by the mining company. The committee comprises - Chairperson, District Officers of Bonthe and Moyamba Districts; Paramount Chiefs of the five chiefdoms; two Ward Councilors within the PHCs; Development Planning Officers; Environment and Social Officers; Members of Parliament representing the constituencies where the PHCs are located; five chiefdom landowners; five chiefdom religious heads; five chiefdom women's leaders; five chiefdom youth leaders; five farmers representatives and one CSOs Representative (Sierra Rutile Limited, 2018, p.6).

By the provision of the Act, the CDC does not give PCs the usual overwhelming power to determine the nature of development. Though PCs are part of the CDC, they are not allowed to serve as chairperson. As a result, PCs have considered the CDC as a threat to their long-held 'custodian authority.' This is what Jackson (2006) advanced, there is no accountability process to ensure that funds are used for development, and it is relatively common to hear the local people complain about the misappropriation of the funds by chiefs (p. 99-100).

At each of the five chiefdoms, members of the CDC executive lack skills to identify, plan, implement and monitor projects. The members either have little or no formal education. The major problem with the CDA is that community members in the committee do not have project management skills (Interview with the Community Relations Department, NMA, February 2019). The CDC Chairperson in Rutile accentuated this challenge. "Chiefdom level CDC members cannot come up with realistic projects for their chiefdoms. Most of them only become part of the committee because of the fund and not necessarily to help address the problem in their chiefdoms."

Figure 2: Key Actors in the CDA Process: Resource Policy 61: 232: 2019, Conteh and Maconachie





CONCLUSION

The CDA has created a mandatory fund for the development of primary host communities. It has also empowered the ordinary members of the community to determine the development agenda. Even though it seeks to eliminate the entrenched elite capture in the extractive sector, the CDA, with the intricate provision in the Act prevents the community people from determining what constitutes the primary host community. It has engendered a new ground for contestations between the traditional authority and the CDC. There is a deep-seated conflict between PCs and the Chairperson of the CDC committee. PCs consider the CDA as a threat to their traditional authority and thus pose a considerable challenge to the implementation of the CDA program.

The study, therefore, called for the harmonization of the CDA and Local Council plan to prevent violent conflict. The Mines and Minerals Act of 2009 should be reviewed to address the ambiguity on the identification of PHCs and the minuscule 0.01 percent CDA fund be increased to spawn sustainable community development. Members of the CDC should be trained on project management, procurement, and reporting. The CSOs should provide oversight function on the community development fund to ensure transparency and accountability.

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