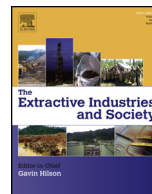




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## Original Article

# Community development requirements in mining laws

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## ABSTRACT

Since the mid-1980s, 32 countries around the world have adopted community development requirements into their mining laws, while nine countries are in the midst of doing so. This new public regulation approach to addressing mining's impact goes beyond mitigating the negative effect of mining on local communities (such as through compensation arrangements and environmental laws), to requiring firms and/or states to ensure that mining translates into real, positive social and economic gains for mining-affected communities, thereby redressing the inequitable distribution of mining's costs and benefits. I address the question of cross-national variation in the adoption of these laws through a combination of statistical analysis and a case study of regulatory reform in Sierra Leone. I find that strong regional, organizational, and economic pressures provide material and normative incentives for states to adopt these laws, with global norms diffusing from the international to the domestic level through international institutions, actors, and financial flows. Countries with community development in mining laws are likely to influence neighboring states to adopt similar laws, while soft law initiatives like the Extractive Industries Transparency Initiative exert normative influences on member states to adopt new laws that benefit mining-affected local communities. States further adopt the laws to attract foreign investment into their mining sectors, as community development in mining laws serve as a signal to the international community about the quality of a country's investment climate – in particular, the security of the investment environment.

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## 1. Introduction

Over the last twenty years, community development programs have achieved prominence in the corporate social responsibility (CSR) activities of mining firms (Eweje, 2006; Kemp and Owen, 2013; Newell, 2005; Hamann, 2003; Kemp, 2009, 2010). Concerned with formulating a positive reputation in the eyes of foreign and domestic stakeholders, pre-empting the adoption of new regulations, and maintaining a social license to operate within the local communities living in geographical proximity to their areas of operation, mining companies such as the Rio Tinto Group, Newmont Mining Corporation, and BHP Billiton as well as smaller multinationals and domestic firms have voluntarily implemented a variety of programs that deliver social and economic benefits to local communities (Kapelus, 2002; Yakovleva, 2005; Jenkins, 2004; World Bank, 2012; ICMM, 2012b). Local development programs provide public goods and

services to communities, including basic infrastructure like roads, schools, water wells, and hospitals, as well as educational scholarships, health services, and agricultural and small business assistance.

Despite the widespread implementation of voluntary community development programs by mining firms, resource-rich states around the world are increasingly turning to hard law<sup>1</sup> to force mining companies, and in some cases the government itself, to carry out socio-economic development projects in mining-affected communities. Since the mid-1980s, states have been passing new mining laws, or amending existing ones, to require firms and/or governments to generate positive socio-economic outcomes for local communities affected by mining operations. This upward trend has, however, largely been overlooked by scholars studying natural resource management, corporate social responsibility, and socio-economic development.

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<sup>1</sup> Hard law "refers to legally binding obligations that are precise...and that delegate authority for interpreting and implementing the law" (Abbott and Snidal, 2000, p. 421). Hard law consists of rules that are uniform over geographical space, are legally binding and mandatory, and are enforceable (and ideally enforced) by states (Abbott and Snidal, 2000).

In this paper, I explain the cross-national variation in the adoption of community development requirements into mining laws. While one-half of the world's major mining producer countries (10 out of 20)<sup>2</sup> have adopted community development requirements into their mining laws, not all mining producer countries have adopted these laws. Understanding the variation in the adoption of community development in mining laws is important because these laws represent a new approach to natural resource management, wherein states are directly regulating social investment in the mining sector in an effort to reverse the paradoxically negative effects of natural resource wealth (McNab et al., 2012).

I proceed as follows. First, I briefly outline the requirements of the community development requirements that have been adopted (or are pending adoption) into the mining laws of countries around the world, and discuss the puzzling nature of their adoption. I then review the existing literature on progressive domestic regulatory reform, generating hypotheses regarding the effects of international and domestic pressures on the adoption of community development in mining laws. In the third section, I test my hypotheses on a dataset of 124 countries with mining sectors from 1993 to 2013. I then discuss Sierra Leone's regulatory reform of 2009 to illustrate my findings in greater depth. I conclude with reflections on the implications of my findings.

## 2. A new approach to providing benefits to mining-affected communities

Since the mid-1980s, 32 out of 124 countries with mining sectors have adopted new, or amended existing, mining laws, while nine countries are in the midst of changing their mining laws. These laws mandate firms and/or national or sub-national governments to carry out socio-economic development projects in communities that reside in proximity to mining areas. These projects include infrastructure and social service provision as well as the establishment of trust funds for these purposes. These laws are represent an important advance for mining-affected local communities,<sup>3</sup> who are often hardest hit by the negative externalities of mining, including livelihood destruction when land and water sources are used for mining, through the production of pollution, and through the influx of migrant laborers.<sup>4</sup> Yet "mining operations are sometimes the only viable option that remote communities have for social development" (Kemp, 2009, p. 202). Despite this, they generally do not benefit from mining operations since regional or national elites instead capture the benefits or because there is little redistribution of resource revenues back to the areas from which those resources are extracted (ICMM, 2012b).

Community development in mining laws represent a new institutional pathway to try to overcome the so-called resource curse – that is, to mitigate the well-documented negative outcomes of resource wealth by improving natural resource management, turning a curse into a blessing (Rosser, 2006; Ross, 1999; Davis and Tilton, 2005). These laws target the distribution of resource revenues and benefits to the sub-national level, mandating the provision of public goods and services that can boost economic growth and improve individual and collective

<sup>2</sup> Numbers are calculated based on data from the *International Council on Mining and Metals (2012a)*.

<sup>3</sup> By local community, I mean a "population that is significantly affected by a nearby mining operation" (Veiga et al., 2001, p. 192), or that is in the "immediate impact zone" (Kemp, 2009, p. 202).

<sup>4</sup> In some cases, rather than being areas of local economic growth, mining-affected communities become among the most impoverished in a country. For example, gold mining areas in Western Ghana are among the poorest areas of Ghana, as are the diamond mining areas of Sierra Leone, despite the large amount of mineral resources flowing out of these areas.

**Table 1**

States with community development laws (adopted and pending).

Countries that have adopted community development provisions into their national or sub-national mining laws and policies	
China (1986)	Laos (2008)
Ghana (1986)	Central African Republic (2009)
Papua New Guinea (1992)	Ecuador (2009)
Colombia (1994)	Indonesia (2009)
Philippines (1995)	Sierra Leone (2001, 2009)
Nicaragua (2001)	Ethiopia (2010)
Canada (2002)	Afghanistan (2010)
Democratic Republic of Congo (2002)	Kazakhstan (2010)
Mozambique (2002)	Vietnam (2010)
South Africa (2002)	Yemen (2010)
Peru (2004)	Zimbabwe (2010)
Equatorial Guinea (2006)	Guinea (2011)
Fiji (2006)	India (2011)
Mongolia (2006)	Mali (2012)
Niger (2006)	Kyrgyzstan (2012)
Nigeria (2007)	South Sudan (2012)
Adoption of new, or enhancement of existing, community development in mining laws is pending in the following countries	
Ghana	Guatemala
Burkina Faso	Myanmar
Kenya	South Africa
Mongolia	Togo
Mozambique	

well-being.<sup>5</sup> Because national-level developmental gains from resource wealth hide the inequitable distribution of the costs and benefits of mining, it is critical to study the adoption of new regulatory tools that mandate the targeted creation of positive social and economic gains for those who bear the greater costs of mining and that ensure that more people in resource-rich countries actually benefit from their mineral resources.

In Table 1, I list the countries that have adopted, or that plan to adopt, community development requirements into their mining laws. Appendix A provides more detail about each country's legal requirements. Fig. 1 depicts the upward trend in the adoption of community development in mining laws.

## 3. The puzzling nature of progressive mining law reform

The adoption of community development in mining laws is puzzling for three reasons: one, the spatial and temporal variation in their passage; two, their adoption despite the influence of strong systems of transnational private regulation, soft law, and industry

<sup>5</sup> Besides general public goods spending and redistribution of mineral revenues, there are several other ways in which the state plays a role in the direct distribution of benefits to mining-affected communities. The first is through the legal recognition of indigenous land rights, which in practice empowers indigenous communities to directly negotiate the provision of socio-economic benefits with mining companies. However, this has occurred in only a handful of states, such as Norway, Canada, Australia, and Finland. The second way is through recognition and enforcement of strong communal land tenure rights, which can in some cases force mining companies to directly negotiate rights to land and mineral rights with local communities. Finally, when governments (re)negotiate the terms of mining leases with mining companies, they can require that mining companies implement community development projects in the new mining agreements. This occurred in Liberia when the government renegotiated Arcelor Mittal's mineral development agreement, and also in Ghana when AngloGold Ashanti's agreement was renegotiated; both companies are required to establish and contribute to social development trust funds that benefit communities in mining areas. I do not include recognition of indigenous land rights or types of land rights systems in my analysis, as these laws do not directly call for community development in mining-affected areas; rather, community development programs are their (sometimes unintended) outcome. I also do not include contract renegotiation, or the adoption of voluntary community development agreements by mining firms and local communities, since the unit of analysis in my data is the adoption of a new law or policy that requires community development in mining areas.

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