

# **ADVOVACY BRIEF**

## **Pathways for Strengthening Mining Community Development Agreement Practice in Nigeria**

This study investigated mining community development agreement (CDA) practice in Nigeria within the context of the extant provisions in the *Nigerian Minerals and Mining Act 2007* and the *Nigerian Minerals and Mining Regulations 2011*. It was undertaken against the backdrop of how CDAs are construed as a tool for transferring social and economic benefits of resource extraction to communities as well as a magic wand for resolving perennial conflictual relations between extractive resource companies and their host communities around the globe.

Relying on mixed data collection instruments such as *Survey* (administered in Kebbi, Kogi, Taraba, Ebonyi, Edo and Ekiti states as representative samples of the six geopolitical zones), *Focus Group Discussions (FGDs)*, *Townhall discussions/Key Informant Interviews (KIIs)* and assessment visits to project sites (where logistics permitted), the study highlighted a mix-grill of successes and gaps in mining CDA practices in the country. Success wise, mining CDAs have, to some extent, minimised tensions associated with companies' unregulated quest for natural resource extraction and communities' abstemious demand for development projects as compensation for the negative impact of mining activities. They have opened up channels of communications where mining companies and host communities engage regularly in a sense that promotes peaceful relations. This relative cordial relationship birthed by CDAs has fetched some direct and indirect employment opportunities for community people and boosted local economy, especially petty trading and transportation.

Despite being a global tool for mitigating general and context-specific problems associated with natural resource extraction, mining CDA in Nigeria is replete with enormous gaps across communities. First, there is limited public knowledge about its existence, particularly in communities whose interest it was conceived to serve. While all licensed mining companies are fully aware about it (given that it is a pre-condition for mineral extraction), not many people in mining host communities are aware about their rights of participation in the negotiation and implementation of CDA projects as depicted in the enabling mining law and regulations. Thus, besides

being sidelined in these processes, communities are made to see CDA projects as gifts that must be applauded, and not questioned; especially in terms of the size and the quality of project delivery. The situation has not only divided communities along compromised and agitation lines, it has also blocked access to channels of complaint to relevant authorities and prolong conflictual relations.

Perhaps, the biggest gaps in CDA practice across states and communities visited for the study is the sheer disregard for intersectional diversity in the processes for identification and selection of representatives for mining CDA project negotiation and implementation. From both quantitative and qualitative perspectives, analysis of intersectional data of women, youth and persons with disabilities (PWDs) involved in CDA processes across the communities visited shows an unprecedented under-representation. This has, to a large extent, undermined their views and special needs in the projects selected for implementation. Thus, beyond unenviable numbers, the mere recognition that these social categories of persons bear the biggest brunt of dislocations in mining communities (over-work, educational disruption, health hazards, and physical immobility/incapacitation) makes their under-representation a huge marginalization issue deserving of urgent redress.

This, combined with other institutionally targeted recommendations, will enhance the realization of a functional CDA practice model in Nigeria.

## **Recommendations**

### ***A. Government:***

The government should pursue:

- Law review leveraging specific good practices of other climes, particularly amendment of the Minerals and Mining Act 2007 and the Minerals and Mining Regulations 2011 to remodel CDA to reflect the Petroleum Host Community Development Fund model. By this, it is meant that Nigeria should adopt a “Fund/Incorporated Trust Approach” to CDA implementation with involvement of states and local governments as against the present practice which places communities at the mercy of mining companies who play lords of the manor;
- Leveraging the Natural Resource Development Fund (NRDF) to prioritise capacity development of mining communities on CDA negotiation, project planning and monitoring in the Incorporated Fund/Trust;

- Review and popularization of the Minerals and Mining Regulations 2011 to emphasise intersectional representation in CDA committees. It should also in collaboration with civil society lead to a review of MMSD's *Guideline for the Production of Community Development Agreement in the Solid Mineral Sector* (2014) to provide for intersectionality to become a stand-alone issue as against its currently subsumed placement in Chapter One, Section 2.2 covering *Stakeholder Participation*. In that way, marginalization of under-represented groups such as women, youth and PWDs will be taken care of.
- Insistence on benchmarking CDA negotiation against MMSD's *Guideline for the Production of Community Development Agreement in the Solid Mineral Sector* (2014) to enhance appropriate implementation monitoring of outputs and outcomes.
- Strengthening of Mining Environmental Compliance (MEC) Department of the MMSD to ensure effective monitoring and enforcement of compliance of provisions in the Minerals and Mining Act (2007) and the Minerals and Mining Regulations (2011) through adequate recruitment of staff with the requisite capacities to deliver on their state-level responsibilities;
- Insistence on compliance with provisions in the Minerals and Mining Act (2007) and Guidelines (2011) that CDAs are a pre-condition for commencement of mining operations in communities and not an after-commencement of mining operations;
- Recognition of community rights to receive MMSD response to complaints about companies' breach of the terms of duly signed CDAs as part of early warning, early response mechanisms for conflict prevention and resolution; and
- Institutionalisation of feedback mechanisms, including annual reporting and appraisal of CDA implementation by CDA Committee through MEC officers in the states to MMSD and activation of social protection policy for CDA and project documents.

### **B. Mining Companies**

Mining companies should ensure:

- Prioritisation of community happiness, while pursuing profit. This includes addressing genuine needs of the community and paying due attention to labour laws, especially CDA-propelled employment issues of payment of

minimum wage and guarantee of Health, Safety and Environment (HSE) rights;

- Conceptualisation of community benefits beyond money-sharing to capture more sustainable benefits in the areas of education, infrastructure, employment, development of local economy as well as trainings that address challenges of socio-economic problems,
- Adoption of collaborative CDA models in communities with small-scale mining companies to maximize development impact.
- Resistance to temptation to engage in divide and rule approach to CDA project negotiation, implementation and monitoring.

### ***C. Communities***

Mining communities need to ensure:

- Moderation of expectations and obsession with pecuniary gratifications over more enduring long time community interests and benefits;
- Prioritisation of Human Development-inclined projects than worship centres during CDA project negotiation and execution;
- Targeting of CDA to Leverage diverse opportunities in the mining value chain to grow local economy, including taking advantage of formalisation of mining cooperative societies in small and medium-scale artisanal mining;
- Inclusive representation of the different social groups in the CDA governance structure for purposes of intersectional balance (women, youth and PWDs); and
- Collective responsibility for CDA project negotiation, implementation and monitoring for quality assurance.

### ***D. Civil Society***

There is so much civil society can do to ensure:

- Sensitisation and facilitation of trainings for communities to enhance their capacity and ability to articulate and negotiate good deals with mining companies;
- Monitoring of implementation terms and specifications of CDA projects for quality delivery;

- Collaboration with the MMSD to review, update, mass-produce, circulate and train communities on the 2014 *Guidelines for the Production Community Development Agreement in the Solid Mineral Sector*;
- Engagement with relevant stakeholders in the mining sector (including Miners Association of Nigeria and Women in Mining in Nigeria) on the desired reforms of CDA practice and the need for self-regulation and self-censorship; and
- Facilitation of development of broad-based metrics/instruments for shadow-reporting and ranking parties in CDA implementation (CDA Watch/Index) in Nigeria.