



Legal Empowerment Training for the Mawero Mining Host Community Welfare Association (MMHCWA)

30th October 2024

Community Engagement in Mining Operations



Community
Development
Agreements



Primary Host
Communities



Community Engagement in Mining Operations



Community-Based Organizations



Establishment & Governance of Community Based Organisations.



Environmental Management in Mining Operations



Principles of Environmental Management.



Environmental and Social Impact Assessments. (EIAS)



Why it's crucial for MMHCWA to access Wagagai's NEMA Certificate of Approval for the Environmental and Social Impact Assessment.

Training Objectives



Simplify the law

To simplify the law governing Community Based Organisations, Environmental and Social Impact Assessments, Mineral Rights, and Access to Environmental Information



Empower participants to advocate for their rights

To empower the participants to advocate for their rights and to actively participate in community initiatives aimed at environmental protection.



Encourage active participation

Encourage active community participation in environmental protection initiatives.



Increase awareness of the right to a clean and healthy environment

Educate participants on their fundamental right to live in a pollution-free and sustainable ecosystem.

Community Engagement in Mining Operations

Is Community Engagement a Prerequisite for Mining Operations?

Yes, it is a prerequisite.

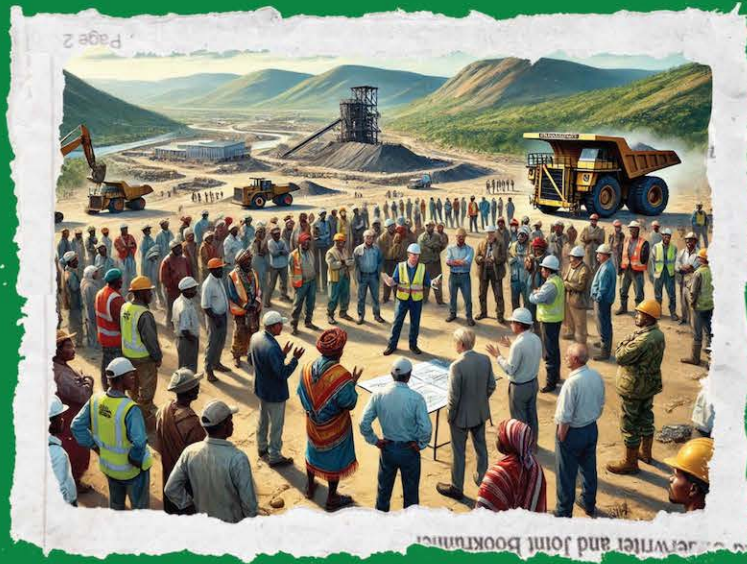
Under the Mining and Minerals Act Cap. 159 (MMA):

- Every holder of a large-scale, medium-scale, or small-scale mining licence is required to:
 - Negotiate and implement a Community Development Agreement (CDA) with the primary host community where the approved mining operations are located.
 - The negotiation and implementation of the agreement must follow the manner prescribed by regulations.



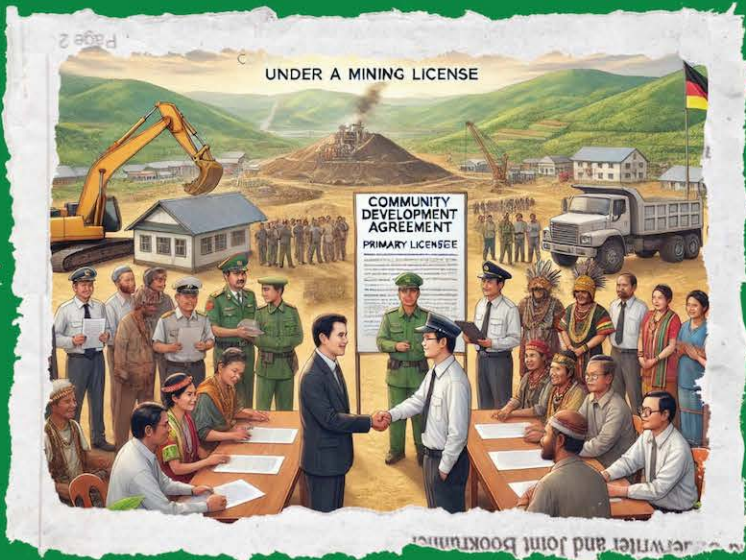
Community Engagement in Mining Operations

Is Community Engagement a Prerequisite for Mining Operations?



- And, according to the same Act, such an agreement is a prerequisite for commencement of operations under a mining licence.

What is a Community Development Agreement (CDA)?



Although the MMA does not define what a CDA is, one thing is certain in the MMA:

- A CDA concerns two parties:
 - A mining licensee (i.e., a person that has been granted a mining licence by the Minister of Energy and Mineral Development).
 - The primary host community.

What is a Community Development Agreement (CDA)?



Kristi Disney Bruckner, in his article titled "Community Development Agreements in Mining Projects," published in the Denver Journal of International Law and Policy Vol. 44, defines CDAs as:

- Contracts between companies and communities.
- Contracts that govern various aspects of the impacts and benefits of natural resource development projects.

What is a Community Development Agreement (CDA)?

CDAs outline how the holder of a mining licence will contribute to the social, economic, and environmental development of the community.



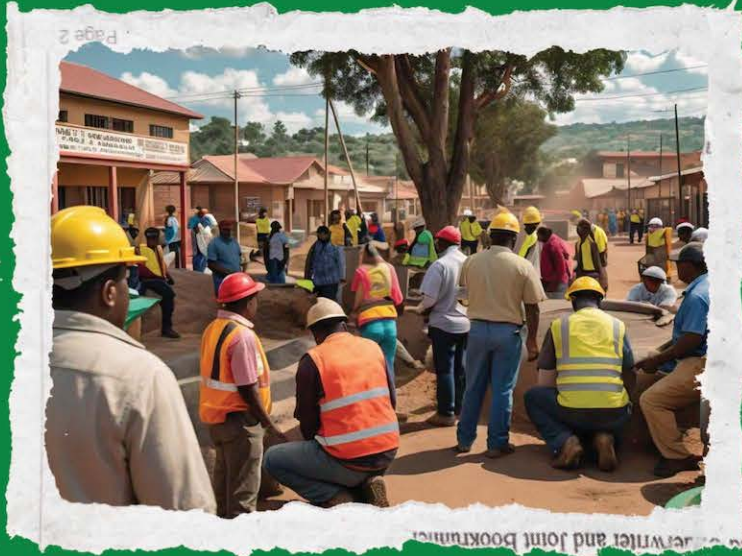
They usually include commitments to:

- Infrastructural development.
- Employment opportunities.
- Education and healthcare support.
- Environmental protection measures.

What is a Community Development Agreement (CDA)?

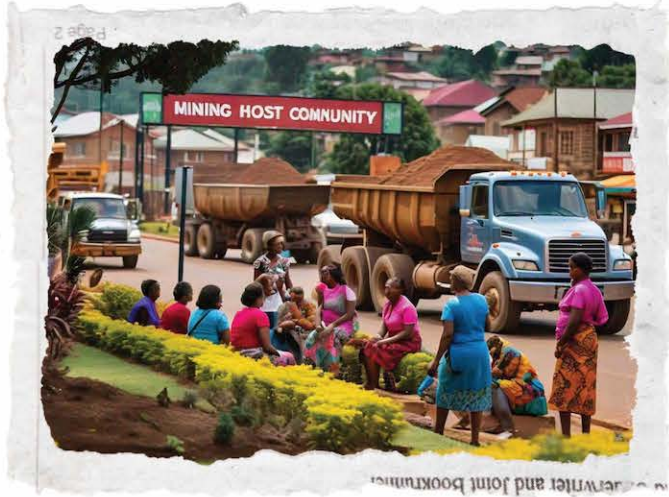
CDAs are a valuable tool for:

- Developing and maintaining positive company-community relationships.
- Facilitating effective two-way communication.
- Increasing community participation throughout the life of a development project.



What is a Primary Host Community?

According to the Mining and Minerals Act (MMA), a Primary Host Community refers to:



- A single community of persons mutually agreed upon by the holder of a large-scale, medium-scale, or small-scale mining licence and the local government, where the mining area is located.
- If there is no community of persons residing within thirty kilometres of any boundary defining the mining area, the primary host community shall be the local government.

How can a community living within thirty kilometers of a mining area effectively position itself to negotiate a community development agreement with the mining licensee?



- By the members of that community coming together as a group and registering themselves as a Community-Based Organisation.

What is a Community Based Organisation (CBO)?



According to the Non-Governmental Organisations Act Cap. 109 (the “NGO Act”):

- A Community-Based Organisation (CBO) is an organisation operating at a subcounty level and below.
- Its objective is to promote and advance the well-being of the members of the community.

How are CBOs created?



Regulation 15(1) of the Non-Governmental Organisations Regulations, 2017, states that:

- A person or group intending to form a Community-Based Organisation must apply for registration to the District Non-Governmental Monitoring Committee before operating in a district.

Documents that must accompany the application include:



- A copy of the constitution of the CBO to be registered.
- A recommendation from the Sub County Non-Governmental Organisations Monitoring Committee.
- A work plan and budget or strategic plan for the CBO.

Documents that must accompany the application include:



When the District Non-Governmental Monitoring Committee is satisfied with the application:

- It will register the CBO and issue a certificate of registration and a permit.
- Notably, CBOs are exempted from submitting annual returns to the NGO Bureau under the said regulations.

What are some of the administrative systems and structures that are needed to run a CBO?



Vision, Mission, & Objectives:

- Guide the activities and decisions of the CBO.



Governance Structure:

- Defines roles and responsibilities of board members, staff, volunteers, and beneficiaries.



Financial Management System:

- Ensures accountability and transparency.
- Components: bank accounts, budget, cash book, ledger, receipts, vouchers, and financial reports.



Monitoring and Evaluation System:

- Tracks progress and measures impact.
- Includes: log frame, indicators, data collection tools, feedback mechanisms, and reports.



Communication Strategy:

- Raises awareness and mobilizes support.
- Tools: logo, website/social media, flyers, radio programs, or other media platforms.

Does a CBO have a legal personality—in other words, can it own land, enter into contracts using its own name, or sue or be sued in its own name?



The NGO Act and regulations are silent on whether a CBO has legal personality.

- It is not advisable to assume that a CBO has legal capacity.
- Case: Chome Simea and Others v. Kaya Parish Grazing Area and Another (HCT CIV Appeal 0015/2010):
- Held that registration as a CBO does not confer legal capacity to sue or be sued.

Does a CBO have a legal personality—in other words, can it own land, enter into contracts using its own name, or sue or be sued in its own name?



Case: Mading Jerome v. The Sanctuary & 3 Others (Labour Dispute LDC No. 175 of 2017):

- The Industrial Court of Uganda stated that:
 - While an aggrieved party in a mainstream NGO may sue the organisation,
 - In a CBO, the aggrieved can only sue individual managers of the organisation.

So how then do CBOs enter into contracts with other persons or how do they enforce a fundamental right guaranteed under Uganda's 1995 Constitution?

Contracts:

- A CBO's constitution can authorize a member (e.g., chairperson or treasurer) to:
 - Enter into contracts on behalf of the CBO.
 - Define the scope of authority, including types of agreements and approval processes.
- Contracts signed by an 'authorised' member will bind all members of the CBO.

Enforcing Fundamental Rights

Under the Human Rights (Enforcement) Act Cap. 12, a member of a CBO can:

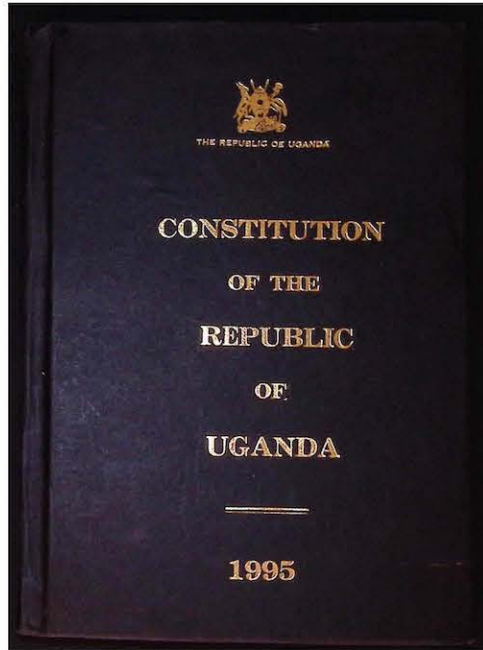
- **File a lawsuit in their personal capacity and as a member of the CBO to enforce constitutional rights.**

- **It is advisable to include a clause in the CBO's constitution authorizing a member (e.g., Chairperson or Secretary) to institute lawsuits for the CBO.**

- **The clause should also cover scenarios where the 'authorised' member refuses or fails to act.**

Environmental Management in Mining Operations

What are some of the Laws that govern Mining Operations in Uganda?



- The 1995 Constitution of the Republic of Uganda
- The Mining and Minerals Act (MMA)
- The National Environment Act Cap. 181 (NEA) and its regulations

Key Principles of Environmental Management (NEA)



Environmental and Social Impact Assessments:

- Required for projects that may significantly affect the environment or use of natural resources.



Environmental Protection Standards:

- Ensure standards are established.
- Effective monitoring of environmental quality and resource use.
- Publish data on environmental quality.



Mitigation Hierarchy in Assessments:

- Avoid and minimize impacts.
- Achieve restoration targets.
- For residual impacts, deliver biodiversity offsets.



Human Rights and Environmental Management:

- Ensure environmental processes align with international human rights standards.



Climate Change Resilience:

- Prioritize approaches that increase resilience for both the environment and people in public and private projects.

Is it mandatory for a mining licencee to comply with these principles of environmental management?



Yes!

- The MMA emphasises that anyone involved in mining operations must comply with the principles and safeguards of environmental management as prescribed in the NEA and other applicable laws.

Environmental and Social Impact Assessment (ESIA)

What is an ESIA?



- An analytical process that systematically examines the likely environmental and social impacts of a proposed project.
- Evaluates alternatives and designs appropriate mitigation, management, and monitoring measures.
- Considers socio-economic, cultural, and human health impacts, both beneficial and adverse.

Is an ESIA mandatory for mining licensees?

Yes, it's mandatory.

- Schedule 5 of the NEA lists mining as an industry that requires an ESIA.
- The MMA requires every mineral rights holder to carry out an ESIA.
- The MMA states that operations can only commence after securing a Certificate of Approval from NEMA.



Importance of NEMA Certificate of Approval for Host Communities

Original 11368

THE REPUBLIC OF UGANDA

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)
The National Environment Act Cap. 153
The Environment Impact Assessment Regulations, S.1 No. 13 of 1998

Certificate of Approval of Environmental Impact Assessment

Certificate No. NEMA/EIA/ 11368

This is to certify that the Project Brief / Environment Impact Statement**
received from
M/s: NATIONAL INFORMATION TECHNOLOGY AUTHORITY UGANDA
(NITA)
of P.O. BOX 33151 KAMPALA (TEL. +256 417 801049)
submitted in accordance with the National Environment Act Cap.153 to the National Environment
Management Authority (NEMA) regarding:
THE EXTENSION OF THE GOVERNMENT NETWORK (LAST MILE)
(Title of Project)
briefly described as **THE EXTENSION OF THE GOVERNMENT NETWORK TO
MINISTRIES, DEPARTMENTS AND AGENCIES**
(Nature, Purpose)
located at **VARIOUS DISTRICTS OF UGANDA**
(District/Sub-county/City/Town/Ward)
has been reviewed and was found to:
** have significant environmental impacts and the following appropriate mitigation
and made a condition precedent for approval and implementation:
(The relevant conditions are attached in the subsequent pages)
Dated at **KAMPALA** on **27 SEPTEMBER 2018**
Signed 
EXECUTIVE DIRECTOR (NEMA)
ORIGINAL: Developer; DUPLICATE: Lead Agency; TRIPPLICATE: The Authority; QUADRUPPLICATE: Any other relevant agency

Why is it important for a Primary Host Community to access the NEMA Certificate of Approval?

- The NEMA Certificate allows the host community to verify if the mining licensee is complying with the conditions in the certificate.
- If the mining licensee's actions are contrary to the certificate, the Primary Host Community has grounds to alert the relevant authorities.

Understanding Minerals and Ownership of Minerals



Definition of minerals



Ownership rights over minerals



Acquisition of mineral rights in Uganda

Access to Environmental Information



Right of Access to Information



Whether this Right is Absolute



How to access environmental information



Enforcement of the right of access to information



Understanding Minerals

Definition of a Mineral



Article 244(4) of the 1995 Constitution of the Republic of Uganda as amended (the “Constitution”) defines a mineral as any substance, other than petroleum, whether in solid, liquid or gaseous form occurring naturally in or on the earth, formed by or subject to a geological process.

- Examples of Minerals: Diamond, gold, copper, uranium, and cobalt.

Who Owns Minerals in Uganda?

Government Ownership



- The Government of Uganda/the State. The State holds such ownership rights on behalf of and for the benefit of the people of Uganda.
- However, Article 244(1) of the Constitution guides that the Government's ownership of minerals is subject to Article 26 of the Constitution.

Who Owns Minerals in Uganda? (continued)

Government Ownership



- Under Article 26, every person has a right to own property either individually or in association with others and privately owned land can only be compulsorily acquired by the State upon prompt payment of fair and adequate compensation prior to the taking of possession.

What is a Mineral Right?



- A mineral right means to the legal entitlement to prospect, explore or mine for minerals under licences that are issued under the Mining and Minerals Act Cap. 159 (the “MMA”).

Types of Mineral Licences



Prospecting Licence

- Permits a private entity to search for minerals and includes any operations to test the mineral bearing qualities of any area. It is valid for 1 year; non-renewable.



Exploration Licence

- To identify the presence of minerals and to assess the economic value of the deposits; valid for a period not exceeding 4 years, renewable once for a period not exceeding 3 years.



Retention Licence

- Permits a private entity to retain rights over an area for a specified period, even if mining activities have not started; valid for a period not exceeding 3 years; renewable once for a period not exceeding 2 years.



Large-scale Mining Licence

- Permits a private entity to mine minerals over a large geographical area through mechanised operations; covers up to 50 sq. km; valid for a period not exceeding 21 years.



Medium-scale Mining Licence

- Permits a private entity to mine minerals on a medium-sized scale; also covers up to 50 sq. km; valid for a period not exceeding 10 years; renewable for such further periods not exceeding 7 years at a time.

Types of Mineral Licenses (continued)



Small-scale Mining Licence

- Permits an individual or a private entity to mine minerals on a relatively small scale; area covered by this licence is yet to be prescribed by regulations; valid for a period not exceeding 5 years; renewable for such further periods not exceeding 3 years at a time.



Artisanal Mining Licence

- Permits an individual or a private entity to engage in rudimentary mining of minerals; covers a small geographical area; valid for a period not exceeding 3 years; renewable for periods not exceeding 2 years at a time.



To whom may a mineral right be granted?

Mineral rights can be granted to:



- Ugandan citizens who are individuals – for the artisanal and small-scale licences. Though these two licences can also be issued to a private entity such as a company.
- Companies, partnerships, and other body corporates – for the other types of licences.

How does one acquire a mineral right in Uganda?



- By applying for and being granted any of the licences found in the MMA.
- Mining rights are granted by the Minister of Energy and Mineral Development.
- However, the Directorate of Geological Surveys and Mines handles the administration, management and regulation of the mineral sector.

How does the State secure its ownership rights in mining operations conducted by licenced private entities?



- By entering into mineral agreements with such entities.
- The MMA establishes the Uganda National Mining Company which is wholly owned by the State to manage Uganda's commercial holding and participating interests in mineral agreements.

Has the MMA been operationalised yet?



- As of September 2024, regulations to operationalize the Mining and Minerals Act are still under consultation, with expectations to finalise before the end of the year.

Access to Environmental Information

Right of Access

According to Article 41 of the Constitution and Section 4(1) of the Access to Information Act Cap. 95, every Ugandan citizen has a right of access to information and records in the possession of the State or any public body except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with any person's right to privacy.



The nature of the Right and the Access to Environmental Information

The Right of Access to Information is not an absolute right. In other words, there are instances where the right will not be enforced or respected e.g., when the information sought, if disclosed, would endanger or harm the State's security or sovereignty. The National Environment Act Cap. 181 (the "NEA") also says that the Right does not extend to proprietary or confidential information.



Case Study: Greenwatch v. Attorney General

Issue:

Whether the confidentiality clauses in the petroleum production sharing agreements barred Greenwatch from accessing copies of the said agreements.

Ruling

The High Court of Uganda ruled that the agreements were public documents and that the Attorney General had failed to qualify the confidentiality clauses within the established standard of exception in Article 41 of the Constitution. As a result, the Court ordered that Greenwatch be availed with copies of the agreement.



Access to Environmental Information (Continued)

- The NEA provides that a person desiring environmental information is free to make a request in writing to NEMA or a lead agency for the said information, and NEMA or the lead agency may grant access upon payment of the prescribed fee.
- Also, it is a must for every developer to display his/her NEMA Certificate of Approval of their ESIA including all the conditions of approval, in a conspicuous place on the premises of the project. (Reg.52)

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Access to Environmental Information (Continuation)

Response Time

- NEMA or a lead agency must respond to requests for environmental information within 21 days from the date the written request is received.
- This timeline is provided for in Section 15(1) of the Access to Information Act Cap. 95.



Enforcement of the Right of Access to Information



- If NEMA or a lead agency refuses to grant a request for environmental information, the applicant can seek to enforce their right of access to information by filing a law suit against NEMA under the provisions of the Human Rights (Enforcement) Act Cap. 12.

Enforcement of the Right of Access to Information (Continued)



Court's orders on enforcement

- Courts can order appropriate remedies, including compensation, when access to information is unlawfully denied.

Procedural flexibility

- The Human Rights (Enforcement) Act Cap. 12 ensures that cases are not dismissed due to procedural technicalities or errors in form.

Summary

- Mineral rights in Uganda are granted through various licences found in the MMA.
- Minerals in Uganda are owned by the State which holds such ownership rights on behalf of and for the benefit of the People of Uganda.
- The Right of Access to Information is a constitutional right but it is not an absolute right.
- Confidentiality clauses in environmental records cannot act as a barrier to the exercise of the Right of Access to Information unless they are qualified within the established standard of exception in Article 41 of the Constitution.
- Citizens can seek to enforce their right to access information through legal action under the Human Rights (Enforcement) Act.



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