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# Mining Law Committee News

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**'CHALLENGES IN THE 21ST CENTURY: NEW ISSUES ON THE HORIZON'**



the risks of the investment to the party best placed to absorb the risk;

Ensure that contractual provisions supplement rather than supplant domestic law, and apply international best practices – such as the IFC Performance Standards – to minimise the risk of community backlashes or renegotiations;

Take advantage of investment risk insurance and investment risk guarantees provided by large development finance institutions, such as the World Bank's Multilateral Investment Guarantee Agency (MIGA) and African Development Bank's political risk insurance cover; and

Carry out an extensive on-the-ground assessment of the contract area, and start stakeholder engagement with local communities as early as possible.

In the case of unjustified government action, investors have various options, including:

Protections offered under Bilateral Investment Treaties (BITs), if there are any between the investor's State, and the host country. BITs offer protections such as fair and equitable treatment, protection from nationalisation, among others; and

Investment dispute resolution mechanisms such as under the International Centre for Settlement of Investment Disputes (ICSID). About 45 African countries have signed the ICSID Convention.

### Conclusion

With a better understanding of local legislation, access to information and the right advisors, investment on the continent should continue to be highly rewarding.

### Notes

- 1 The author reserves copyrights. The contents of this article are for general use only, and should not be relied upon without seeking specific legal advice. The author accepts no liability for any such reliance. The author wishes to acknowledge the invaluable contribution of Mr Hamisi Mgandi, legal assistant.
- 2 Deloitte, 'State of Mining in Africa in the Spotlight', 2015. Available at: [www2.deloitte.com/content/dam/Deloitte/na/Documents/energy-resources/na\\_zs\\_state\\_of\\_mining\\_africa\\_09022015.pdf](http://www2.deloitte.com/content/dam/Deloitte/na/Documents/energy-resources/na_zs_state_of_mining_africa_09022015.pdf); fDi Intelligence, 'The Africa Investment Report 2015,' a Financial Times publication. Available at: [http://forms.fdiintelligence.com/africainvestmentreport/files/The-Africa-Investment-Report-per-cent202015\\_download.pdf](http://forms.fdiintelligence.com/africainvestmentreport/files/The-Africa-Investment-Report-per-cent202015_download.pdf)
- 3 Youth and the African Union Commission website, available at: [www.africa-youth.org/](http://www.africa-youth.org/).

## ResourceContracts.org – a searchable repository for publicly available mining and petroleum contracts

**R**esourceContracts.org is an online, searchable and user-friendly repository of publicly available mining and petroleum contracts from around the world. It currently includes over 1,000 from 72 countries. In addition to PDF scans of each executed contract, the site includes: the full text of contracts in searchable format; plain language summaries of each contract's key social, environmental, human rights, fiscal, and operational terms; and tools for searching and comparing contracts. Users can search contracts by country, natural resource, year, by type of contract, company, corporate group, or by annotation category.

The goal of the site is to provide access

to these contracts in a single location, in a machine readable open data format that can serve a number of stakeholders including: host governments; communities and civil society organisations; investor companies; the media; and development practitioners to understand key aspects of the contracts that govern large-scale extractive industry investments.

ResourceContracts.org was first launched in 2012. In October 2015 a new and improved website housing ResourceContracts.org was released. The website is jointly managed by the Natural Resource Governance Institute (NRGI), Columbia Center on Sustainable Investment (CCSI) and the World Bank

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(WB). In October 2015, the site was re-launched with additional user features and many new contracts from around the world.

The project managers have also partnered with a number of countries, including Guinea, the Philippines, and most recently Sierra Leone to set up country-specific sites for the publication and explanation of extractive industry contracts and associated documents.<sup>1</sup> Developing country-specific sites through ResourceContracts.org can help national governments satisfy their transparency commitments under such initiatives as the Open Government Partnership or the Extractive Industry Transparency Initiative, by publishing contracts on an easy to use website.

The ResourceContracts database is continuously updated with contracts and features. For more information, please visit

the site at [www.resourcecontracts.org](http://www.resourcecontracts.org), or send an e-mail to the project managers at: [nrgi@resourcegovernance.org](mailto:nrgi@resourcegovernance.org).

#### Note

- 1 Guinea was the first country to launch a country-specific database of mining contracts in February 2013, making publicly available more than 60 contract documents covering 18 mining projects. The Guinea mining site can be accessed at: [www.contratsminiersguinee.org](http://www.contratsminiersguinee.org). On 26 October 2015, the Extractive Industries Transparency Initiative (EITI) of the Philippines launched its own portal at the Open Government Partnership Summit in Mexico, which houses 87 contracts and associated documents. The Philippines site can be accessed at: <http://contracts.ph-eiti.org>. Most recently, in February 2016 at the EITI Annual Conference in Lima, a similar collaboration was announced with the Ministry of Mining and the National Minerals Agency in Sierra Leone to set up a designated country site that will include links to geological data, community development agreements and environmental impact assessments related to mining contracts in addition to the contracts themselves.

IBA SEERIL  
Academic  
Advisory Group

## A new SEERIL study: *Sharing Costs and Benefits of Energy and Resource Activity*

SEERIL's Academic Advisory Group has produced a new study that it will present at the biennial SEERIL conference in New York: Lila Barrera-Hernández, Barry Barton, Lee Godden, Alastair Lucas, and Anita Rønne, eds, *Sharing Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities* (Oxford University Press, 2016).

The book argues that a new phase is emerging in the relationship between energy and resource activities and the communities that are affected by them. It has become clear that the laws and regulatory frameworks that govern energy and resource projects in their interaction with communities are undergoing change. The existence of a new phase was evident in presentations at the biennial SEERIL conference in Berlin in 2014, and the AAG resolved to explore the ideas involved. It set itself a research objective of understanding the changing legal

framework in which energy and resources activities bring benefits to communities but also impose costs on them.

Law for many years has mediated impacts on communities through compensation regimes, assigned risk and liability, and provided legal measures for the distribution of financial benefits. Now, communities see more clearly that they have a stake in arrangements that deal with risk but which may affect their rights. Effects on local communities may cover a spectrum from negative consequences such as environmental damage, loss of amenity, social and cultural dislocation, and economic disruption, to more positive outcomes such as benefit packages promoting health, education and cultural outcomes, revenue flows, and jobs. The effects can also be more far-reaching than impacts around the immediate site of the project as regional, national, and transnational tensions may play out against the backdrop of energy and resource