

# Empowering communities: a case study on the role of one company's in-house counsel in sustainable social development

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## Synopsis

*In many countries, the mining industry has become the primary source of employment, driving local development and broader economic growth. While there have been some high-profile cases of mining companies negatively affecting local communities and environments, those that properly invest and take a responsible approach to people and the environment, based on best industry standards and guidelines, can drive positive change. When done responsibly, mining can deliver a number of direct and indirect positive contributions to promote lasting community development, particularly in emerging economies.*

*This chapter presents a case study of how leadership and coordination by the corporate law department of one mining company could help to produce sustainable economic benefits and community development during mining operations and long after.*

## The integration of legal and sustainable development functions

The importance of the integration of corporate legal services and sustainable development functions is demonstrated by Nordgold's two mines in Burkina Faso: Taparko and Bissa. Both mines are co-owned by Nordgold and the Government of Burkina Faso, with the latter controlling ten per cent of operations.<sup>1</sup> Taparko is in the Namantenga province in the northern part of the country, close to the Mali border, while Bissa is in the central part of the country in the Bam province. Both mines have provided considerable economic and social benefits to the local communities. For example, in both regions, the main source of income and revenue is farming,<sup>2</sup> but this had been seriously affected by severe dry seasons experienced 'in Sub-Saharan Africa/in the Sub-Saharan region'.<sup>3</sup> Consequently, in 2012, Bissa constructed the Tiben reservoir,<sup>3</sup> which has since provided a consistent water supply to farmers in the region, in turn allowing them to cultivate crops all year round.

Multinational corporations, especially those operating in Africa, are increasingly seeking to promote responsible mining as part of their corporate sustainability strategies. Environmental, social and corporate governance (ESG) represents the new guiding principle for mining companies. ESG initiatives are considered not only to be a means of managing reputational risks, but as an essential part of modern business, where workers and human rights protections, environmental standards and effective community development

are becoming increasingly vital.<sup>4</sup> In this way, sound ESG principles can also result in lower costs and greater efficiency, in addition to making a material contribution to reducing emissions. An example of this and how new technologies are leading to an improvement in environmental performance, is how Bissa is currently assessing whether to install solar panels,<sup>5</sup> as well as the Gross mine, in Russia and Lefa mine, in Guinea, upgrading their respective powerhouses.<sup>6</sup>

Throughout the life of a mine, a variety of opportunities are created for the local market. Local businesses supply the project with materials, goods and services, while thousands of local jobs are typically generated, further supported by social development programmes delivered by the operator. This is how international mining enterprises help stimulate the growth of local capabilities.

Providing fair remuneration for workers, as well as protecting their health and safety, is an essential commitment for responsible businesses. Such companies strive not only to attract the best employees, but also to ensure that their workforce stays with them long term, and is sufficiently motivated to work hard and prove themselves effective. This also ties into effective anti-corruption efforts. Today, eliminating corruption is not only an economic imperative; it ensures that business is done fairly and that opportunities are allocated fairly, creating better outcomes for all.

### *Ongoing development*

Nordgold is an internationally diversified one-million-ounce gold producer with over 8,000 people operating a portfolio of ten mines (in Burkina Faso, Guinea, Russia and Kazakhstan) and a number of development and exploration projects in West Africa, Eurasia and the Americas.

Since its inception in 2007, Nordgold has always been a responsible mining company that has put ESG front and centre in every part of its investment decision process, as well as embedding it in its wider culture. In recent years, Nordgold has acted to strengthen this further through an increased focus on sustainability. The company has joined the United Nations Global Compact,<sup>7</sup> further confirming its commitment to the UN's Sustainable Developments Goals. Nordgold also continues to improve its policies and procedures, including integrating Scope 1, 2 and 3 emissions into its ESG reporting.

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4 Rachel Fixsen, 'Denmark's P+ divests 12 stocks where influence attempts are "hopeless"' IPE Magazine [www.ipe.com/news/denmarks-p-divests-12-stocks-where-influence-attempts-are-hopeless/10050622](http://www.ipe.com/news/denmarks-p-divests-12-stocks-where-influence-attempts-are-hopeless/10050622).article accessed 10 February 2021; Neil Hume, 'Vale takes first steps to divest coal stocks' *Financial Times* [www.ft.com/content/27fcd922a-41e6-a043-2600ff93a1f](http://www.ft.com/content/27fcd922a-41e6-a043-2600ff93a1f) (21 January 2021),

5 'Nordgold to Build Solar Power Station at Burkina Faso Mines,' <https://nordgold.com/investors-and-media/news/nordgold-to-build-solar-power-station-at-burkina-faso-mines/> (22 October 2019).

6 'Nordgold to Construct New Power Plant at its Lefa Mine in Guinea,' <https://nordgold.com/investors-and-media/news/nordgold-to-construct-new-power-plant-at-its-lefa-mine-in-guinea/> (20 April 2020).

7 'Nordgold, UN Global Compact [www.unglobalcompact.org/what-is-gc/participants/138338-Nordgold](http://www.unglobalcompact.org/what-is-gc/participants/138338-Nordgold) accessed 15 February 2021. Since 31 December 2019, Nordgold has been one of more than ten thousand companies that have participated in the Global Compact. See also 'Making Global Goals Local Business,' UN Global Compact [www.unglobalcompact.org/sdgs](http://www.unglobalcompact.org/sdgs) accessed 15 February 2021.

Further, ESG criteria (including the EIA and Human Rights implications) is now fully integrated into all investment decision-making and therefore a new approach to the due diligence process is currently being implemented. While an active approach to ESG performance is encouragingly becoming more prevalent and a global trend, Nordgold has been continually ahead of the pack in this respect.

In Guinea and Burkina Faso, Nordgold is among the countries' top taxpayers and investors. The company is also an important employer, with its total staff reaching 3,000 employees. Of them, more than 95 per cent are nationals, which reflects the commitment of Nordgold to create opportunities for the local population. Nordgold contributes to the community empowerment, building new infrastructures and improving existing ones. The company has built over 100 schools, drilled hundreds of water boreholes, built dozens of places of worship for different religions and dozens of other structures, such as clinics, community centres and law enforcement posts.

Nordgold focuses on the integration of the UN's Sustainable Development Goals (SDGs) throughout its operations, with the elimination of poverty and hunger its primary target. By creating decent jobs and numerous career opportunities, the company is helping people to improve their living conditions and create better futures for their children. Another crucial focus for the company's SDG agenda is gender equality. It runs dedicated women empowerment programmes aimed at promoting the autonomy of women and creating better access to education.

Complementing job creation and training, Nordgold's societal programmes are always developed with the specific needs of the local community in mind. In order to ensure that a village will benefit from the new infrastructure or empowerment initiatives, the company's Community Relations Department, together with the legal team, develop special committees where local authorities, spiritual leaders and community members can share their visions of the community's needs. Without a strong legal framework, an efficient implementation of the community development projects would be impossible. For example, the role of the in-house legal counsel is changing. The legal department now plays a more active role in establishing strategies and corporate policies that should be aligned with international ESG standards and principles. Similarly, the legal team also plays a vital role in ensuring sustainability is established in corporate governance practices and proper ESG reporting is in place.

Once up and running, mining businesses such as Nordgold continue to create jobs and generate incomes for the state and local communities. Around 95 per cent of Nordgold's employees are nationals<sup>8</sup>, often in high-level roles in security, civil construction, or health and safety superintendents. Finance, supply chain, processing, surveying, geotechnical and metallurgy functions are also undertaken by nationals. National employees conduct metallurgy training, exploration drilling and benefit from promotion opportunities.

However, following a mine's eventual closure, the initiatives Nordgold puts in place from

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8 Nordgold, *Corporate Social Responsibility and Sustainable Development Report 2019*, p. 36, <https://nordgold.com/upload/iblock/36c/Nordgold%202019%20Sustainable%20Development%20Report.pdf>.

day one help to ensure that communities remain as strong as during operations. Vocational training offered to the local communities helps them to secure roles – for example, welding and plumbing – that will continue to be required in the local area indefinitely. In this way, Nordgold invests heavily in training for its employees, particularly focusing on the development of local employees to improve career advancement opportunities. Specifically, Nordgold invests around \$5m a year providing new skills and leadership capabilities.<sup>9</sup>

### *Community empowerment and the UN SDGs*

The implementation of most of Nordgold’s community empowerment programmes, including new infrastructure construction, provision of micro credits to the local population, resettlement of villages around new mines, all require a legal background, combined with regular and effective communication with local and state authorities. Therefore, the integration of legal and corporate social responsibility (CSR) activities is an important aspect of legal function in modern industrial corporations, and an essential condition for the achievement of the SDGs.

Micro-credit provision is recognized by the UN as an important social project, which helps to foster local entrepreneurship. By creating the right social conditions and improving the accessibility of credit, we can help local business to grow. Nevertheless, a strict legal management of such projects is required to avoid any potential misuse of funds. Again, legal expertise is as important as understanding the practicalities of the SDG principles, with a mine’s legal team required to develop a solid legal framework reflecting both specialisms.

Most of the projects seek to improve the quality of life for local communities, while some serve as an emergency response to a specific critical situation. As the Sub-Sahel climate is severe, crops are sometimes affected by the harsh drought periods or heavy rains causing flooding. When crops are ruined, cereal prices can drastically inflate, making food too expensive for local communities. To mitigate this issue, another legal mechanism was established: during normal seasons, Nordgold purchases the crops from local suppliers, creating food banks. In the event of a disaster, the food bank provides the communities with food and low prices. The legal team engages with the local authorities to ensure a fair use of the food bank’s resources.

Jobs at Nordgold mines are often oversubscribed, with workers travelling from dozens of villages. The company must therefore ensure a fair distribution of job quotas among all the communities. Such quotas are agreed with each community and corporate human resources management and legal/community relations services work to ensure that the quotas are respected.

## **The role of Nordgold’s in-house legal team in ESG initiatives**

Throughout the lifecycle of a mine, ESG challenges represent an ongoing consideration

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<sup>9</sup> Ibid, at p. 80.

for legal teams both at a corporate headquarters and local level. The legal, government relations and community relations functions are efficiently integrated in Nordgold within one department led by the Chief Legal Officer who is also Head of Corporate and Regulatory Affairs. Legal Directors in both West African business units (in the Republic of Guinea and Burkina Faso) also lead community relations effort and some local African community relations employees are lawyers by education. Indeed, the management of community projects requires understanding legal regulations, local and international practices and adherence to often complicated procedures.

Nordgold's ESG Committee was recently formed to address the major climate, social and governance risks faced by almost every international mining company. A core objective was to develop key ESG initiatives and inform incorporate best practices throughout Nordgold's business strategy and integrate sustainable processes and projects across all its departments. The committee is headed by the Chief Legal Officer, lawyers, Health and Safety Executive (HSE), communications and community relations personnel. Procurement, human resources and finance functions are also involved in discussions to identify major areas of improvement and to ensure that personnel at all levels manage the impacts of their operations in a proper way. This makes it certain that the company conducts its businesses ethically and responsibly as a fundamental condition of its operations.

### *Challenges to navigate*

First and foremost, there is no clear and comprehensive legal framework for CSR activities, meaning that Nordgold's projects are guided by general international standards, such as the Universal Declaration on Human Rights and conventions adopted by the International Labour Organization.<sup>10</sup> The SDGs provide principles to build economic growth and address a range of social needs including education, health, social protection, job opportunities, climate change and environmental protection issues. The International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability are applied to all projects that have environmental and social risks and impacts, while the World Bank's Environmental and Social Framework sets out guidelines that help Nordgold design programmes to support borrowers' projects, combatting extreme poverty, among other challenges. As most of the international regulations are of a rather general nature, analyses of best industry practices and the examples of peers operating in the same regions help fill any gaps in normative standards.

Almost every community initiative requires a breadth of potential agreements between the stakeholders involved; there is no general approach to such contractual schemes. These interactions and relationships are mostly governed by local practices within a general international framework. In this respect, comprehensive analysis of the social, economic, cultural and educational environments of a certain area (eg, a village near the mine) are

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10 Nordgold, Human Rights Policy <https://nordgold.com/upload/iblock/129/Human%20Rights%20Policy.pdf> (August 2020)

crucial for any project implementation.<sup>11</sup>

Where a project requires state authorisations and licences, which is the case in all resettlement and construction projects, legal assistance and regular communication with state and local authorities become essential. It should be noted that community relations issues and security challenges in West African countries have some specific considerations. Unlike many other jurisdictions, in Burkina Faso and the Republic of Guinea where Nordgold operates, business can help to shape legislation before it reaches the legislative bodies. In this respect, by participating in meetings and discussions with state and local authorities, with the peers within the Chambers of Mines and other non-governmental fora, it is possible to bolster support for certain legislative initiatives. This requires additional expertise and skills from the in-house lawyers who usually lead this process.

It is worth noting that accessing pertinent legal information is not always easy as there are no unified databases, meaning any nonstandard legal issue often requires a team of in-house specialist lawyers working with local colleagues to mitigate potential legal and business risks. The level of uncertainty is also more pronounced in these markets and the opportunity to involve external legal counsel with deep expertise in a particular legal issue is considerably lower.

Generally and it is the same at Nordgold, communications between lawyers working in foreign holding companies and local legal and CSR teams are mostly coordinated online. Now more than ever, emails, conference calls and video conferences are crucial day-to-day tools. In this respect, managing projects remotely with teams consisting of people who are based in different locations, having deferent cultural backgrounds, different professional experiences and speaking different languages is a challenge that Nordgold had to address, long before the Covid-19 pandemic put this on the agenda worldwide.

In the meantime, communications with state authorities and officials are often less bureaucratic in some African countries than lawyers may be used to managing in other regions. Local legal personnel, well acquainted with local legislation and practices, play an essential role in this effort. However, the formation and training of local legal teams is another challenge that companies rarely face in other regions. Indeed, the legal market in Burkina Faso, for example, is rather young and it is challenging to find lawyers and legal firms with deep legal expertise both on national and international levels to implement projects that require understanding of the specifics of multinational corporations and international or foreign law implications. To address this issue, Nordgold seeks to recruit promising local personnel and to integrate them into its own corporate culture and the standards of work common for legal departments worldwide, bearing in mind multicultural, religious and other special considerations that are typical for that region.

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11 International Finance Corporation – World Bank Group, ‘Guidance Note 1: Assessment and Management of Environmental and Social Risks and Impacts,’ Guidance Notes to Performance Standards on Environmental and Social Sustainability [www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN\\_English\\_2012\\_Full-Documents\\_updated\\_June-27-2019.pdf?MOD=AJPERES&CVID=mRQmrEJ](http://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN_English_2012_Full-Documents_updated_June-27-2019.pdf?MOD=AJPERES&CVID=mRQmrEJ) (27 June 2019).

## Nordgold sustainable projects

The following are examples of how Nordgold's legal team performs a central coordinating role in the company's sustainable projects.

### *Grievance and complaint management mechanisms*

One important example of the legal team's involvement in the sustainability of operations is the grievance mechanism. This mechanism, which is managed by a lawyer within Nordgold, is an important tool to resolve potential issues and disputes and balance the interests of all interested parties concerned.<sup>12</sup> At Nordgold's West African mines, a special complaint handling procedure is implemented to ensure an amicable and constructive settlement of any complaints made against the company using a complaint management mechanism adapted to the local cultural context. This supports and promotes fundamental human rights and develops productive, respectful and mutually beneficial partnerships within communities affected by Nordgold's operations.

It deals with all verbal and written complaints filed by an individual or group against the company, its employees, subcontractors and service providers. This procedure is based on the principle of direct conversations or dialogue through mediation to find amicable solutions to any disputes and issues that were not subject to formal court proceedings.

Any member of the local community or group can file a complaint related to any area of operations that potentially affects the wellbeing of the community, whether that be health, environmental or security related, among other areas. If settlement of the claim requires the payment of compensation, payments are made within 24 hours following signature of the agreement between the relevant parties. Community relations officers and the General Manager of the company are responsible for the accessibility, transparency and efficiency of this procedure.

This grievance mechanism, which is a matter of community relations, requires legal input and judgement and therefore the Grievance Manager is a lawyer, who will have a master's degree in international law, a deep understanding of the national law and practices and knowledge of best international practices recommended by the IFC. The Grievance Manager records the claims and analyses them from both the community relations and legal points of view. The Grievance Manager then follows up with the investigation process, communicates with state authorities, if needed and ensures that a fair solution is found. In cases where such a dialogue is insufficient to reach a solution, the local legal team is called to act, together with the community relations department, to resolve the issue fairly.

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12 International Finance Corporation – World Bank Group, 'Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts,' Performance Standards on Environmental and Social Sustainability [www.ifc.org/wps/wcm/connect/8804e6fb-bd51-4822-92cf-3dfd8221be28/PS1\\_English\\_2012.pdf?MOD=AJPERES&CVID=jiVQIfe](http://www.ifc.org/wps/wcm/connect/8804e6fb-bd51-4822-92cf-3dfd8221be28/PS1_English_2012.pdf?MOD=AJPERES&CVID=jiVQIfe) (1 January 2012).

## *Resettlement programmes*

Resettlement programmes implemented by mining companies represent another example of how operations can directly affect the wellbeing of local communities.<sup>13</sup> In resettlement cases, the engagement of the legal team is especially important due to the sensitivity of the issues and the necessity to follow a number of complicated compliance procedures. The legal function must ensure the effective and efficient implementation of the legal framework throughout the entire process: from the impact study until residents are accommodated in new homes.

The Zandkom resettlement was an important and complex project, which affected the entire population of Zandkom village, a typical rural locality in Burkina Faso. It lies less than five kilometres from Bissa, Nordgold's major mine in the country. The Zandkom project's Environmental and Social Impact Assessment found that, due to the severe climate of the Sub-Sahel region and general economic situation in Burkina Faso, the local population could not afford decent homes with modern sanitary facilities. An average house in Zandkom is a modest building of seven square metres. Farming and livestock breeding are the key sources of income, but the average annual income of \$1,500 per household does not allow people to improve their conditions by extending their agricultural land or purchasing additional livestock. Some of the inhabitants, especially the young, are employed in dangerous artisanal mining, where mercury is used to recover gold.

When the potential of the Bissa deposit was confirmed, local inhabitants were given the opportunity to improve their living conditions considerably. Their houses were replaced with better ones and other properties were compensated in cash, all according to the well-recognised standards of the IFC and World Bank. This serves as an important source of revenue for the local population. Furthermore, the resettlement has created new social infrastructure, which has led to the creation of new opportunities, particularly for women.

The Zandkom resettlement has been undertaken in adherence to the IFC's Guiding Notes and more recent World Bank Environmental and Social Standards. From the early days of the project, an Environmental and Social Impact Assessment (ESIA) was prepared, together with the community engagement process. This project has been backed by the legal function to ensure full compliance with best international standards and national laws. To ensure the entire population has access to the necessary information about the project, a committee was established, where citizens, local authorities and the company's representatives could maintain a dialogue. The open and fair consultations guaranteed the equal participation of all stakeholders.

The compensation payments were an important step of the resettlement. On one hand, Nordgold worked to ensure that all the property was duly recorded, analysed and evaluated. The Resettlement Action Plan for the Zandkom project set a mission to apply

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13 International Finance Corporation – World Bank Group, 'Performance Standard International Finance Corporation – World Bank Group', 'Performance Standard 15: Land Acquisition and Involuntary Resettlement,' Performance Standards on Environmental and Social Sustainability, [www.ifc.org/wps/wcm/connect/75de96d4-ed36-4bdb-8050-400be02bf2d9/PS5\\_English\\_2012.pdf?MOD=AJPERES&CVID=jqex59b](http://www.ifc.org/wps/wcm/connect/75de96d4-ed36-4bdb-8050-400be02bf2d9/PS5_English_2012.pdf?MOD=AJPERES&CVID=jqex59b) (1 January 2012).



fair market prices to the community's goods. Equally, the standards clearly state what kind of property is subject to compensation and at what stage. All the collected data is recorded in a Resettlement Action Plan (RAP), an integral part of the impact study. The legal and community relations team must verify the property list to create a legal framework for the compensation. The next step is the signing of the agreements, with legal expertise required to protect and balance the rights of both the communities and Nordgold. As part of its commitment to its partner communities, the company is committed to organising financial literacy education for the affected residents. This helps them to manage their newly-gained money properly and to avoid potential losses.

Another dimension of the legal support within the resettlement process is Nordgold's contribution to the development of urban property rights protection. A common issue in any village in Burkina Faso is the lack of the owner's rights certificates. The land and houses are not thoroughly protected by formal law, as no legal evidence of the property rights exists. After any resettlement carried out by Nordgold, a valid state-issued certificate is provided to all citizens of the newly-built village so that people are protected from potential future risks of involuntary resettlement, which unfortunately has happened before. As well as property rights, an appropriate urban plan of the new village is developed by Nordgold and approved by the relevant state authorities. This contributes to Burkina's urban development, creating well organised localities.

During the resettlement, not only must legal aspects be respected, but also the customs and traditions of the local communities. Before moving to their newly built homes, families traditionally hold a special ritual. With full respect for these local traditions, the legal and community relations team accompanied the communities and helped them to organise a suitable event.

Following the resettlement, Nordgold must ensure the people profit from the improved living conditions, while retaining access to traditional activities and customs. Local inhabitants are mostly farmers and mining activities disturb their fields. Although the resettled community is duly compensated, the company must ensure that it has access to even better farming opportunities. Here again, the efficient collaboration of the legal team and community engagement are important in ensuring the project's sustainability. Nordgold's legal, community relations and environmental teams also closely cooperate to ensure reforestation, which is a legal obligation established to compensate for the negative impact mining operations may have on the environment.

The Zandkom resettlement is one of many and the most recent example of a successful resettlement project which benefitted from the close collaboration of the company's legal and community relations functions. Participating in such projects all of the time means that lawyers continue to learn and develop new skills, implement existing practices while looking to introduce new ones. Nordgold continues to apply sustainability programmes, focusing on the projects, that create stable futures for local communities even after the mines' closures. Livestock breeding and micro-credits projects are other examples of how it distributes money and trains local people, helping them to develop a healthy local economy.

## About the authors

**Evgeny Tulubensky** is the Chief Legal Officer, Corporate and Regulatory Affairs, at Nordgold. Tulubensky joined Nordgold as Chief Legal Officer in 2007. He formerly held a senior legal position at the mining division of Severstal (LSE: SVST), Russia's leading steel manufacturer. Tulubensky leads a team of in-house lawyers and regulatory affairs specialists providing legal support both at corporate and business unit levels. His responsibilities also include oversight of internal and external communications as well as government and community relations. Tulubensky graduated from St Petersburg State University and holds an LLM from Northwestern University, Illinois.

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**Andrei Naumov** is the Head of Community Relations and Sustainable Development at Nordgold. Before joining Nordgold in 2017, he worked for communication agencies. Naumov coordinates Nordgold's mines interaction with local communities, including relocation projects and livelihood restoration programmes. He is also responsible for the Nordgold's CSR initiatives. In 2020, Naumov collaborated with local stakeholders in West Africa, Russia and Kazakhstan to fight the spread of Covid-19.