AVOIDING THE "BIG BLACK HOLE" OF DEVELOPMENT AID: THE LEGAL PROMISE AND INHERENT CHALLENGES OF COMMUNITY-DIRECTED DEVELOPMENT

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ABSTRACT

In the face of recent natural disasters in places such as Haiti and Pakistan, as well as the chronic underdevelopment in many regions of the world, development aid funnels billions of dollars around the globe every year in an effort to improve the lives of suffering populations. However, the distribution of those funds is constantly controversial, and much is said about the potential for mismanagement in international development, as well as the risk of political paternalism in dictating what needy communities are lacking. Community-Directed Development (CDD) is a growing trend in international aid that improves upon many of these pitfalls commonly associated with development. If structured properly, CDD can provide a beneficial and empowering aid framework that both helps suffering populations and improves the respectability of the international aid industry. However, while much has been said about the political issues related to CDD, little has yet been written about the role of law in this new approach to development. This paper serves to address the role of the law by covering CDD from the institutional structure perspective, as well as the legal risks associated with CDD and CDD-influenced projects.

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INTRODUCTION

While the last century has seen significant efforts made to improve the lives of the world’s poorest individuals, one of the more recent and innovative approaches to development demonstrates a major shift in perspective.¹ Traditional “top-down” international aid emphasizes direct aid in the form of foodstuff and/or funding provided directly to governments, with the assumption that it will funnel down to benefit local suffering communities. Yet, there is a growing trend towards beginning development at the local level.² Community-driven

² Id. at 951. “Taken individually, these projects may provide little evidence of a distinctly global approach to questions of governance, but on the whole they surely blur the lines between the international and domestic spheres, and between bottom-up and top-down approaches to development. One thing is certain: a simple dichotomy between national and international, where the only relevant actors are
development ("CDD") initiatives are founded on the belief that a local village knows what it needs far better than a far-removed government official, and that a community is much more likely to actually benefit from aid programs if locals are involved in the development and/or implementation processes. This paper claims that CDD, as a promising option for development aid initiatives, should be considered not only for projects that rely on it as their primary modus operandi, but also for development efforts that employ it as a part of a greater structure. In turn, I acknowledge the legal and policy challenges that stem from CDD implementation, and set out options for how those may be overcome through careful structuring of the CDD process. Development organizations benefit from incorporating CDD into their initiatives because it is both more favorable for developing communities, due to their direct involvement, and the organization due to its ability to make them more appealing to donors.

The first section of this paper provides an expansive definition of CDD that encompasses both formal and informal CDD efforts. The second section delves into who engages in CDD, both explicitly by structuring their development initiatives around a fundamental CDD-based approach and implicitly through institutions that rely on CDD as a key aspect of a broader development organization. The third section addresses why CDD is a better approach to envisioned to be the state and the isolated bureaucrats of a handful of international orgs, has lost its utility both as an analytical tool and as a blueprint for action. It is likely naïve to think that community-based institutions remain immune from national and supranational influence. As such, the future of global administration will depend on our ability to develop new mechanisms for holding decision-makers accountable, whoever and wherever they are, w/o retreating back into narrow conceptions of state-centered power relations.”

3 Das Gupta, Monica, “Fostering CDD: What Role for the State?” World Bank Policy Research Working Paper 2969. January 2003. “Involving local communities in the development process has several advantages because they have direct knowledge of the situation…and direct stake in the outcomes. Local information can be put to good use in many ways for planning and implementation programs.”

development, touching on the primary and secondary benefits that come from CDD initiatives, and exploring how CDD efforts can rebut many of the criticisms leveled against international development aid. In response to these criticisms, the fourth section acknowledges many legal challenges and practical issues that are unique to CDD, and how CDD projects can be structured to combat those problems. Finally, the fifth and sixth sections focus on the future promises of CDD, including the various ways that projects can incorporate CDD aspects into their planning and implementation and concluding aspirations for improved development aid efforts.

SECTION I: DEFINING CDD

For the purpose of this paper, CDD shall be defined as: the involvement of local community groups in the development process. Such involvement may come in the following form(s):

- Consultation in the brainstorming process of program development
- Direct participation in design of development programs
- Allocating decision-making power for program implementation to recipients
- Recipients receiving grants and handling funds for development projects
- Recipients employed by grant-making organization to perform services

CDD projects share a general goal of using funds to directly impact local life by allocating resources in a manner that is more likely to achieve local development success stories, project completion, and the receipt of funds at the desired end-points. CDD projects are typically specific, with small-scale primary purposes, but there may be numerous secondary ancillary

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benefits. These initiatives may consist of large-scale efforts by foreign government aid
departments, international organizations, non-governmental organizations, private-public
partnerships (PPP), or corporate social responsibility projects. CDD may be at the core of the
development institution’s structure, where it directs the entire initiative in a formal way. In the
alternative, it may be a formal or informal component of a larger development institution
framework. Either way, the organizations engaging in development aid stand to benefit from
using the CDD approach because it employs many of the reliable funding mechanisms that are
popular in traditional development initiatives, but refocuses priorities on demands voiced by
local communities and empowers recipients by allowing them to not just receive funding or
supplies, but participate in the decision-making and implementation aspects of local
improvement efforts. CDD, by providing communities with input into their local development projects via
roles in consulting, decision-making, and implementation, creates a response with a heightened
focus on local demand. By listening to local needs, development initiatives are more likely to
address immediate local problems and thus more immediately benefit developing communities.
In turn, this negates development aid’s common criticism that it is a “big black hole” for funds,
with few tangible benefits and local improvements. Although individual communities do not

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6 “Supporting Community-Driven Development in Developing Member Countries,” Asian Development
TAR.pdf. See also Utting, Peter. “Promoting Development through Corporate Social Responsibility –
ent
7 Das Gupta, 20. See also Dahl-Ostergaard Tom, “Community-Driven Rural Development: What have we
learned?” Inter-American Development Bank, 2003. 19-20
8 Dahl-Ostergaard 1.
9 Terpolilli, Domenic, “From the Bottom Up: How Community Development Can Save Egypt.” Penn
always have the entire infrastructure necessary to fully implement development projects, they may often work in tandem with local aid groups, field workers, and other demand-responsive support organizations to fulfill these related development goals.\textsuperscript{10} Partnerships do not detract from the “community-directed” nature of CDD development; as long as local voices remain heard and local needs are being met, and third parties do not merely impose their uninformed ideas about what is necessary for local living, what local groups are capable of sustaining over time, and what is the best allocation of resources in development aid endeavors.

CDD projects can address a variety of issues. Their scope and reach can be extremely narrow, such as a project geared towards a particular health or infrastructure project, or exceedingly broad through various social and/or civic goals.\textsuperscript{11} Potential subject-matter includes social infrastructure, including basic education, community centers, health clinics, gender equality or civic engagement; infrastructure projects with direct social benefits, such as potable water, sewerage systems, roads, bridges, and wharves; income-generating activity stimulation, such as marketing, business consulting, micro-loans, and farming and entrepreneurial education programs; natural resource management, such as watershed controls, biological reserve management aid, fishery, agriculture, or aquaculture education and management assistance, or forestry protection projects; finally, others may build on broader civic engagement interests, such as municipal authority capacity building in order to plan, deliver, and sustain public services and provide reasonable (often democratized) representation.\textsuperscript{12}

SECTION II: ORGANIZATIONS ENGAGING IN CDD ACTIVITIES

\textsuperscript{10} Supra 8.
\textsuperscript{11} Dahl-Ostergaard 2-3.
\textsuperscript{12} Id.
Many different organizations, institutions, and companies use the CDD approach in their development aid programs. This section provides several examples of two main types of CDD activities: those that are centered on the CDD approach, and those that rely on it as a cog in a greater development mechanism. These examples include international institutions engaging in CDD activities, nation-state-driven CDD initiatives, non-profit CDD projects, corporate CDD efforts, and public-private partnership (PPP) CDD ventures.

**International Institutions**

The International Bank for Reconstruction and Development’s The World Bank has been at the forefront of CDD activities.\(^\text{13}\) The World Bank has often stated that it believes CDD is the best approach to international development, as it “ensure[s] participatory decision-making and community empowerment.”\(^\text{14}\) The World Bank’s approach to CDD typically involves providing grants to community village committees or elected leadership boards with links to local government structures or non-governmental organizations.\(^\text{15}\) These committees go through several decision-making processes, including diagnosing local needs, defining project objectives, running informational, educational, and communication-related programs in order to engage locals in the process and implementation, thereby turning community members into stakeholders in the projects themselves.\(^\text{16}\) World Bank CDD projects are usually related to infrastructure development, with significant underlying civic engagement goals.\(^\text{17}\)

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\(^\text{14}\) Id.


\(^\text{16}\) Id. at 16-19

\(^\text{17}\) Das Gupta, 8-10.
One of the World Bank’s largest CDD initiatives is the Kecamatan Development Project (KDP) in Indonesia.\textsuperscript{18} Financing flows through the International Development Association to various KDP efforts that have benefited over 18 million persons as of July 2009.\textsuperscript{19} KDP efforts focus on poverty alleviation in rural Indonesian communities by providing block grants to local villages for use in community-directed projects.\textsuperscript{20} Communities participate in the planning and implementation processes, and are responsible for accounting for the use of grant funds.\textsuperscript{21} In turn, the World Bank aims for the CDD projects to develop local villages and improve daily life for impoverished individuals, while enhancing local civic capacity and educating individuals about the importance of accountability and transparency in decision-making and improvement activities.\textsuperscript{22}

The World Bank’s approach to CDD has been criticized for failing to recognize the long-term dedication necessary for many CDD projects, as well as suffering from a disconnect between project goals and implementation outcomes.\textsuperscript{23} Many find that the Bank’s interventions “have failed to provide the consistent and long-term support needed for a development project to become sustainable.”\textsuperscript{24} This is often thought to be because the Bank is better equipped to handle short-term or specific projects, which are held in compliance with Bank financial reporting and top-down management safeguards through IBRD employee monitoring efforts, whereas CDD

\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{24} Supra 18.
projects often necessitate more long-term “on the ground,” monitoring and follow-through in the way of education and project-goal reinforcement.\(^{25}\) These flaws are mainly because the Bank’s structure does not provide for as robust local-level involvement in every country where CD projects are implemented.\(^{26}\) While the World Bank’s CDD efforts emphasize the ancillary benefit of empowering local civic leaders, this is often in place of promoting a wider berth of project areas.\(^{27}\) Civic empowerment does not necessarily flow from small project planning and implementation, and while ambitious goals are optimistic, they do not always effectively handle immediate practical problems and do not inherently result in successful primary and ancillary benefit attainment.\(^{28}\)

**Nation-Driven CDD Initiatives**

International institutions are not the only entities that want to see their development dollars head directly to needy communities, instead of being waylaid in bureaucratic red tape and mismanagement at the government level – state governments, too, prefer this route.\(^{29}\) The United States’ USAID department has been a strong proponent of financing projects directly at the ground level, thereby bypassing high government officials’ involvement and deep pockets. An example of this can be seen through USAID’s Iraq Community Action Program (CAP).\(^{30}\)

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\(^{26}\) Id. at 49

\(^{27}\) Id.

\(^{28}\) Id.

\(^{29}\) Pascocello, Susan Keller. Lecture: USAID. Temple University, Beasley School of Law. October 7, 2009.

undertaking this type of approach to development, USAID demonstrates that CDD can be a component of a larger development aid framework, and can exist in tandem with more traditional development approaches. Certainly USAID maintains relationships with state governments, and engages in many “top-down” development efforts, but they also recognize the benefits to be gained through CDD-style aid initiatives and the strength it can add to local empowerment and relationships between donor institutions and recipients.\textsuperscript{31}

Iraq CAP works directly with partner NGOs on the ground, in consultation with local government counterparts.\textsuperscript{32} The NGO partners operate in five regions – the north, Baghdad, the southwest central region, the southeast central region, and the south.\textsuperscript{33} CAP’s efforts are primarily directed at creating representative, participatory community groups that can identify critical local priorities and implement community-based development projects that address those particular local needs.\textsuperscript{34} While Iraq CAP programs are supported by USAID via funds provided to local NGO partners, CAP communities are typically required to contribute fifteen to twenty per cent of the value of each project, through cash, manual labor, or in-kind materials and support.\textsuperscript{35} This is believed to increase their interest in seeing the project through to completion, continue their involvement in the project, and have a direct stake in its long-term success. While the primary goal is often the particular community-need-based project, USAID acknowledges that CAP’s essential feature is its grassroots democratization.\textsuperscript{36} CAP’s community action groups (CAGs) represent a range of minority interests within the communities, and foster community

\begin{flushleft}
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
\end{flushleft}
interest in civic decision-making and development activities. Through local decision-making structures and support from organizations on the ground, CDD offers a method of development that has the potential to appeal to locals on a community-by-community basis, and provide community leaders with autonomy and input into their region’s future, thereby empowering those who have often been left out of development projects.

**Non-state Actor CDD Initiatives**

Governments and large international institutions are not the only groups that see the benefits of CDD. Non-state actors, such as charitable organizations and private corporations, bear witness to the stronger payback and greater likelihood of success from community-directed development.

**Non-Governmental Organizations**

The Community-Directed Development Foundation (CDDF), is a Ghana-based charitable organization that employs CDD at the center of its operations. CDDF relies on stakeholders in local villages to take ownership of development initiatives by helping to plan projects, participate in training necessary for project implementation, and seeing initiatives through to fruition. These projects, which take place in rural Ghana and surrounding border communities, carry out development initiatives focused on disease control, poverty reduction, and environmental sustainability. Although they do not provide explicit details on contract structure, CDDF relies

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37 *Id.*


39 *Id.*

on partnerships with other local and international charities in order to make sure that on-the-ground professions are available to provide oversight on every project and can regularly interact with the community leadership and village development recipients.\(^{41}\)

Corporate Social Responsibility

Shell Oil’s Shell Foundation is a prime example of a corporation’s development arm that conducts community-directed corporate social responsibility projects in developing countries\(^{42}\). The Shell Foundation relies on a model wherein they connect to local markets and cooperate with local citizens on the ground to form pilot tests for development ideas. These pilots are implemented at the local level, with the successful ones eventually spun off into their own local development organizations.\(^{43}\) The primary motivation behind CSR is usually described as the reality that “large firms need to act as good corporate citizens and actively support community development initiatives.”\(^{44}\) The Shell Foundation depends on partnerships with local groups to serve as conduits between the Foundation and local communities.\(^{45}\) These local groups and community members benefit from the influx of funds from Shell, as well as the independence

\(^{41}\) Id.
\(^{44}\) Dahl-Ostergaard 17.
that they gain by primarily working with local development actors, instead of far-flung project leaders in developed nations.46

International non-profits and private organizations alike are at risk when engaging with local individuals or local organizations in the development aid process. The fear of accidentally funding terrorism is a major modern concern for any organization that provides money to foreign community institutions and initiatives.47 In particular, organizations based in North America or Europe must comply with various laws imposed on grant-making institutions in order to demonstrate that they are not intentionally or unintentionally financing terrorist activities.48 The European Union, through community-wide directives and state implementation, restricts donations to organizations suspected of funneling money to terrorists, and nonprofits must fulfill reporting requirements when they dole out funds in accordance with EU Anti-Money Laundering directives and member-state private sector financial requirements.49 The United States also maintains regulations imposed by the U.S. Treasury, necessitating extensive reporting about received donations, disbursement of funds, and fund tracking.50

46 Id.
Source of law is also a major concern for any organization operating development projects outside of their home country. When questions arise regarding contract enforcement, mismanagement of funds, or any kind of litigation needs, there are issues about what laws apply to the project’s activities, and about practical concerns regarding the adequacy of local courts and/or locals’ ability to participate in adjudication of disputes in local or foreign court systems. The best way to often deal with these concerns is to take into account the risk of these issues in deciding on which projects to fund, and engaging locals in educational training about how to properly handle contract relationships and fund management in the first place, to avoid problems as much as possible down the road.

Partnerships
Public-private partnerships (PPP) also utilize the CDD format, for example through the Community Development Carbon Fund. This multi-donor trust fund is administered by the World Bank, and relies on government contributions and support, as well as the involvement of private partners. This project uses donor funding to fund Emissions Reductions purchases and thereby support projects in developing countries. The trust fund’s resources are used to purchase emissions reductions from projects. Those emissions reductions are then distributed amongst trust fund donors. As of October 2007, CDCF has signed 20 Emissions Reductions Purchase Agreements for a total of 7.1 million carbon dioxide equivalents. These purchases help to fund extensive development projects in infrastructure, industry, and other sectors. These emissions

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53 Id.
purchase agreements are based on contractual obligations governed by English law, bound by arbitration in accordance with UNCITRAL.  

CDCF’s CDD-style projects include the Rio Frio Wastewater Management Project in Columbia, the Community-Based Renewable Energy Development in the Northern Areas and Chitral in Pakistan, and the Electrogaz Compact Fluorescent Lamp Distribution Project in Rwanda. The Rio Frio Wastewater Management Project improves wastewater treatment and contributes to GHG emissions in the metropolitan area of Bucaramanga, Columbia. It engages in CDD-style relationships with local community members by tying community electricity access and healthcare benefits to the wastewater management efforts, and by employing local individuals in the development and running of the management centers. The Community-Based Renewable Energy Development in the Northern Areas and Chitral pursues an extensive hydropower development project through a three-part dialogue process with the local community. This dialogue includes initial negotiations with community representatives about the nature of the project and the predetermined mutual obligations between the project and the community, presentation of detailed Terms of Partnership, and the final signing of the Terms of Partnership and the deposit of the first installment in a project account opened by the community representatives. The Electrogaz Compact Fluorescent Lamp Distribution Project provides consumers with high quality, low price compact fluorescent lamps through an incandescent-

compact fluorescent exchange and a new-user connection and fluorescent bulb program.

Electrogaz involves the community in the project performance and success by advertising broadly about the project’s activities in English, French, and Kinyarwanda, and by providing a hotline for consumer and potential consumers to call in with questions and to receive immediate advice.\(^{58}\)

Although the CDD approach is not the central focus of The Global Fund to Fight AIDS, Tuberculosis and Malaria, as it is with CDCF, it is still a key component of the Global Fund’s development efforts. Country-Coordinating Mechanisms (CCMs) serve as a liaison between local communities and the Fund’s Secretariat.\(^{59}\) CCMs are made up of local stakeholder representatives, including individuals infected with HIV/AIDS and/or tuberculosis, working as an independent national body within countries where Global Fund grants are provided.\(^{60}\) CCMs prepare and submit project proposals on behalf of local communities, nominate primary recipients to carry out project implementation, select sub-recipients to be involved in program implementation upon project approval, oversee grant implementation, approve major changes in plans mid-implementation, submit necessary ancillary requests to the Fund, and furnish requests on behalf of local recipients for continued funding in order to carry out additional development phases.\(^{61}\) In turn, CCMs engage principal and sub-recipients, which serve as the “legally-constituted entity that can enter into a grant agreement with the Global Fund,” as well as Local Fund Agents, which function as local experts for verifying financial reporting and program

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60 Id.
accountability. In addition, local fund agents serve as in-country staff, and although they are accountable to the Fund, in lieu of an in-state institution, they serve an oversight role and a conduit between local recipients and the Fund’s Secretariat. CCMs work on the ground in developing nations, employing local accounting experts and engaging with local villagers to make sure development projects are designed with community input, and are carried out in country-specific manners, as opposed to a broad cookie-cutter approach.

Common CCM concerns include communication reliability and capacity issues regarding the primary recipient and subrecipient’s abilities to manage grants effectively. The Global Fund employs a case-by-case approach to resolving problems, given that many of them hinge on particular local issues pertaining to local infrastructure and individual recognition of project priorities. Through this approach, the Fund manages problems as they arise and emphasize education about how Fund grants ought to be carried out. When substantial conflicts arise between CCM representatives and recipients, the Global Fund again relies on educating locals on both sides of the conflicts about the importance of partnership relationships and negotiating through disagreements with an eye to the primary and ancillary goals of the development projects.

SECTION III: WHY CDD IS BETTER

63 Garmaise at 9
64 Id. at 13-15
65 Id. at 31
66 Id. at 32
67 Id.
68 Id. at 32-35
CDD projects may be broad-based civic involvement initiatives, or something more specific, aimed at particular infrastructure developments or healthcare efforts, such as crop irrigation or early childhood nutrition education. Nevertheless, CDD is a popular mechanism for local development because it inherently involves several social, developmental, and political promises, and can result in many ancillary benefits to the local and regional society.

**The Overarching Promises of CDD**

CDD offers the following overarching claims: (1) an increase in decentralized political involvement through projects that bypass top-down government corruption and inefficiency by developing local civic engagement from the ground-up; (2) enhanced equal rights at the local level, which can be achieved by requiring inclusive and nondiscriminatory community involvement in CDD decision-making and project management; (3) improved technical infrastructure, supported by education for locals about how the infrastructure functions and how vital it is to their successful development; and (4) enhanced local comprehension of individual legal rights, reformed land and ownership traditions, and the importance of contractual obligations. Most CDD projects focus primarily on one or several of these promises.

Nevertheless, particular CDD projects, as detailed above, have their own primary purposes, typically premised on community needs. While the implementation of these projects aims to achieve their primary goals, CDD is designed to create broader secondary benefits that further develop local society.
Ancillary Benefits from CDD Projects

Particular CDD projects each aim to affect one or more specific areas of society, based on the project’s particular primary purpose(s). Nevertheless, CDD has a broader impact on local communities, and results in vital ancillary secondary improvements. These secondary benefits may include financial, social, cultural, infrastructure, governmental, and accountability improvements that ultimately contribute to society as a whole and to the broader development of the region and the country.

Financial aspects

CDD programs often involve funding going directly to the local level. This financial aspect of CDD is intended to avoid higher government intermediaries that are more likely to delay the trickle-down effect, or direct percentages of funding to their personal needs or other government needs. This, in turn, may delay the commencement of development projects for which the funding was ultimately intended. Through CDD, the funding is directed at local groups who, it is believed, have a direct interest in using it for their community’s benefit in a speedy and practical manner. In turn, this can require building local management capacities, since many local individuals and councils have limited experience handling large sums of money and/or do not understand the accounting principles necessary to manage the funding and report back to donor institutions about how the money is being used. In these instances, locals must be educated about funding management and the importance of proper reporting procedures in order to make sure

69 “Key Lessons Learned on CDD Experience: Towards a Renewed CDD Approach,” Background Information on Georgia. 2006. Slide 9. See also Rawski 941.
that money does not “disappear” in the same manner that it might at higher government levels.\(^{70}\)

While financial aspects of CDD are initially for the benefit of the donor group’s accounting needs, this financial education can be a valuable secondary benefit for recipient communities.\(^{71}\)

Social aspects
Empowering local persons through CDD initiatives often involves combining social advancements with other primary objectives. While this toes the line of being an ethnocentric approach (on the part of the foreign or international group) to improving the lives of locals, many aid providers insist on social equality approaches to development projects, such as requiring women to serve on selection committees, requiring overall representation on planning boards (not just the chief and his trusted advisors)\(^{72}\) It is thought that this will further develop local societies, but as is noted below in the ‘Risks” section, it can often have little impact or result in negative social results, as it is difficult to break tradition and impose new social constructs on underdeveloped, and often rural, communities.\(^{73}\)

\(^{71}\) Dahl-Ostergaard 2
Cultural Aspects

In a related way, the cultural aspects are very important in local life, and development institutions must be sensitive to that reality. This often involves balancing the social goals against the cultural realities, but also can involve promoting local culture through artisan endeavors.\(^7^4\)

Infrastructure Aspects

Transportation and infrastructure are a common aspect of development initiatives. Although they are often the primary purpose of CDD projects, they can also serve as necessary ancillary benefits.\(^7^5\) The improvement of roads, telecommunications accessibility through telephone lines, computers and internet access, and cellular services, postal services, and access to trucks or boats for transport of goods, supplies, and persons is often a key component, or a crucial tangential aspect of CDD projects\(^7^6\)

Governmental Aspects

In order for CDD to be carried out at the local level, there must be a system in place to oversee the planning and implementation of the project(s). This requires local government, often in tandem with social requirements (such as equal representation on boards, secret ballot voting, equal voting rights, etc.) to function effectively, without too many interruptions due to

\(^7^4\) WB CDD Programming, 944; CDD in Conflict Situations: Lessons from Northern Uganda. 3.
\(^7^6\) Bertini, Catherine and Dan Glickman. “Farm Futures: Bringing Agriculture Back to U.S. Foreign Policy.” *Foreign Affairs*. May/June 2009. 103
corruption, in-fighting, and disintegrating systems.\textsuperscript{77} While this may sound a complex and difficult project in itself, it can also foster democratic ideals and social progression on a very real and local level – instead of aiming to make sure a government is established in a democratic way, CDD engenders democratic ideals on the local level, which is much more commonly controlled by birthright autocracies, class and gender discrimination, and a lack of organization.\textsuperscript{78} CDD can provide a formal and democratic framework for local villages to take on large projects in a formal and organized manner.\textsuperscript{79}

External Accountability
Although it is crucial for communities to be accountable for their actions and participation in CDD initiatives, the government and/or organization(s) that are funding and assisting in the project planning and implementation must be accountable to the local communities in return. This goes hand in hand with the financial aspects outlined above, but it goes beyond basic financial accounting education. While there is planning and paperwork behind these endeavors, they all must be based on an essential trust between parties.\textsuperscript{80} Without it, progressive efforts may be perceived as attacks on tradition, and cultural and language barriers may evolve into roadblocks. Additionally, outside groups (either providing funding or assisting in aid project implementation), which are often more accustomed to dealing with governments, need to be attuned to the unique nature of community relationships and priorities that they cannot as easily

\textsuperscript{77} Rawski 929, 944.
\textsuperscript{78} Id. at 931, 944.
\textsuperscript{79} Id. at 941
\textsuperscript{80} “Community-Driven Development in the Context of Conflict-Affected Countries: Challenges and Opportunities,” The World Bank: Social Development Department & Environmentally and Socially Sustainable Development Network. June 20, 2006. 3.
cajole into action through political and international pressures. In most projects, a central government provides the answer in the form of formal, albeit often delayed, reports to donor agencies regarding funding usage. In CDD, accountability shifts downward and horizontally because project beneficiaries are converted from passive recipients of developmental improvements to active participants in the development process. CDD success often hinges on community groups developing the ability to negotiate effectively with the necessary agencies, prepare proposals, reports, or informal recommendations; manage project feasibility, and leverage financing in order to empower themselves to serve as “autonomous agents of change.”

Overarching Concepts About What it Means to Develop an Underdeveloped Country

In terms of broader development aid goals, CDD answers the demands posed by development aid experts like Jeffrey Sachs and Amartya Sen. Amartya Sen’s Development as Freedom argues that development requires removing major sources of “unfreedom,” such as poverty and systematic social deprivation, and neglect of public facilities, and work towards freedom through social freedom, transparency, economic freedom, protective security, and political freedom. Sen believes that development should focus on all of these freedoms, not merely economic development or poverty eradication. Amartya Sen and Jeffrey Sachs both argue for shared growth, wherein communities grow together by initiating social, economic, and civic improvements. CDD follows these advisements by pursuing a holistic development aid paths, not merely providing immediate relief, but providing thoughtful relief based on actual

81 Supra 69.  
82 Dahl-Ostergaard 2  
84 Id.  
85 Id. See also Sachs, Jeffrey. The End of Poverty. Penguin Books. 2005. 226-243
case-by-case needs and a broad acknowledgement of the explicit technical barriers and implicit social barriers that must be overcome when truly developing an underdeveloped community.

SECTION IV: THE LEGAL FRAMEWORK FOR CDD AID ACTIVITIES

Legal Complexities

Along with these practical and social possibilities, CDD offers several legal possibilities due to the arrangement of CDD projects. Although these projects may necessitate looser rules and deadlines, and incorporate more secondary informal education programs in tandem with direct project implementation, all of this activity is premised on legal agreements. Grants and loans must be structured in a way that keeps both sides secure, especially because enforcement in the event of breach may be difficult. Accountability on the part of the foreign or international organization is also imperative because locals will want to be reassured that they are not having foreign will superimposed on their village, but at the same time foreign nationals do not want to risk being pulled into obscure courts and legal systems. Judicial systems require an entirely separate form of development processes, usually with much more upper government involvement, but communicating the importance of administrative law processes, such as contract completion and financial reporting, at the very least guarantees that transactional efforts can result in full-fledged agreements, even if they may not be readily and fully enforceable by law in local court systems.


87 Das Gupta 7, 15-17. See also Rawski 929, 937, 942.

CDD also creates legal challenges in regards to how the collaborations between foreign and local are viewed through the lens of international law. In particular, the fact that these efforts bypass government controls may raise questions of sovereignty in customary international law, and certain nation-states and international organizations that have more traditional methods of handling development projects in developing countries, may face resistance from political leaders and nervous local citizens when they attempt to conduct their projects on a more local grassroots level. International law traditionally regulated interactions among states through the Westphalian state sovereignty concept, which was built upon a foundation in which internal strife and development was addressed solely by leaders of the state. Following World War II, international legal mechanisms were developed to respond to extraordinary instances of humanitarian crises. However, in the case of CDD, organizations expand the concept of “humanitarian crises” beyond the post-conflict sense of the phrase and incorporate ideas of basic life necessities and vital development needs, in order to warrant the type of bypassing of government that occurs in CDD.


90 Dahl-Ostergaard 44.


Practical Risks

CDD involves many inherent risks because it relies on local community involvement with often-minimal government support. Infrastructural, educational, sustainability, and corruption-related needs all come with the territory of CD projects.

Local infrastructure is often undeveloped or underdeveloped and therefore cannot function in a consistent manner in order to facilitate CDD project implementation, even projects that are specifically aimed at improving infrastructure itself. Many projects rely on transportation systems, communications systems, and accounting abilities in order to properly carry out their efforts. This can only be overcome if these issues are tackled first, or if the project is planned from the beginning with full appreciation of the lack of traditional methods of transport, communication, and accounting practices. This necessitates either coming up with ways to get around these problems, or addressing them within the context of the project to the extent necessary to carry out the minimal needs of the project itself.

Although one of the motivators behind this type of development is that it is a way to avoid government corruption, there is always the risk of low or mid-level mishandling of monies and supplies. Power and money does strange things to people and their decision-making capabilities, and in places where families have little, there is often poor understanding of how to properly handle finances and there is often the temptation to skim off the top for the benefit of

94 Iraq CAP USAID, 1.
one’s own family.\textsuperscript{96} Addressing these concerns requires considering the logistics of transparency and accountability, including data exchange, auditing capabilities, and access for representatives to check in on project progress.\textsuperscript{97} These problems, in similar fashion to physical infrastructure needs, must be dealt with primarily through educational efforts and consistent reminders about project goals, which means that these trainings are regularly reinforced, but also means that initiatives may not always be completely successful on all levels.\textsuperscript{98}

Related to the need for practical education about funding management, CDD must also provide education about, and be wary of, corruption at the lower level, funding other corrupt activities, or supporting terrorism. For United States-based corporations involved in public-private partnerships or corporate social responsibility projects, the Foreign Corrupt Practices Act (FCPA) prohibits the payment of any bribes to certain officials for certain purposes, as well as related misleading accounting practices.\textsuperscript{99} In essence, it prohibits issuers, domestic actors, and any persons related to a company from offering anything of value to foreign officials for the purpose of influencing foreign official activities or to secure any improper advantages in obtaining or retaining agreements, deals, or business activities.\textsuperscript{100} For activities by entities not under the authority of the United States Department of Justice and Securities and Exchange Commission, the United Nations has a related agreement on anticorruption measures, as

\textsuperscript{96} “Governance & Anticorruption: Selected Country Highlights,” \textit{Local Democratic Governance}. \url{http://www.adfusa.org/content/highlight/detail/629/?program=6&country=&type=}

\textsuperscript{97} Moxham 7-8.

\textsuperscript{98} Rawski 944.


\textsuperscript{100} “Foreign Corrupt Practices Act Anti-bribery Provisions: a layperson’s guide,” USDOJ, Fraud Section and US Dept of Commerce. \url{http://www.justice.gov/criminal/fraud/docs/ DOJ/Fraud/DOJ/DOJ/DOJ.html}
demonstrated through the UN Global Compact’s Principle No. 10: “Businesses should work against corruption in all its forms, including extortion and bribery.”

Finally, terrorism is a growing concern for both practical (e.g. tax) purposes, and the overall social fear of funding terrorist efforts. This may be as blatant as funding a community that is actually handing over parts of the money to al Qaeda, or more subtle, such as a village supporting terrorist or rebel groups by publicly supporting them, providing them with food and supplies, or housing them. Beyond the social reprehensibility in developed nations as to supporting these fringe activities, developed nations oftentimes have laws against providing money to places that may then use that money to support terrorism, as noted above. This can create problems if these activities are uncovered, but can also serve as a major deterrent that will keep groups, especially those with a major public face, from wanting to engage in CDD initiatives.

In addition to these external fears, there are several other issues to consider in carrying out a CDD exercise. These include: (1) how far and wide the community will be demarcated, in order to ensure success but also avoid exclusion of subgroups; (2) how to reconcile different opinions and viewpoints that are bound to emerge within the community; and (3) what local structures and mechanisms will be involved in project implementation. It is crucial to lay out the specific community that will be involved and impacted in regards to CDD projects in order to best address specific local social barriers and demands. However, CDD project leaders must also be careful to evaluate the reliability of any pre-existing mechanisms and social structures,

101 *Supra* 95.
102 Bjorklund, Victoria and Jennifer Reynoso, “How a Private Foundation can use ‘friends of’ organizations” Simpson Thatcher & Bartlett LLP.
103 Dahl-Ostergaard 8.
104 *Supra* 69.
while acknowledging that it may be difficult to overcome existing community governance and social norms.  

SECTION V: CDD POSSIBILITIES

When it comes to an ideal CDD structure, there are four major aspects that are common to all the goals and examples outlined in this paper. These components improve CDD’s odds of success, and lower the risks associated with these initiatives:

- Flexible structures: institutional ability to “go with the flow,” and adapt with practical restrictions that arise during the initiative implementation process.
- Emphasis on local education: educational initiatives are crucial to CDD success, as basic skills must be developed regarding negotiating contracts, abiding by contractual terms, and accounting for project milestones and use of funds.
- Local partners: bridging the gap between funding sources and recipients is vital to maintaining lines of communication and providing project oversight.
- Local representatives having a true voice: CDD must serve as a truly influential aspect of the development institution, not just provide a false sense of importance to local citizens

The importance of balancing these elements highlights the need to constantly weigh donor fund demands against local realities, and recognizing that, by pursuing CDD, the organization is foregoing some of the more reliable methods of accounting, timely execution of

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105 Dahl-Ostergaard 16.
projects, and government relations. Each of these components helps to safeguard against the risk that an initiative will fall off course. This risk is not unique to CDD, but with CDD, given that more responsibility is handed over to local individuals, it is harder to mitigate. Flexibility is key to remaining on track because it casts a project’s goals in a realistic light, and is often the only way to deal with the adjustments necessary when interacting with communities unaccustomed to formal business practices and implementation schemes. An emphasis on education programming continues the informational aspects of development aid, but provides reassurance that formal demands inherent to these projects may actually be done properly. Local partners are not necessary, but are often useful, as seen through the USAID and Shell Foundation examples, because they provide a bridge across the cultural and physical gaps between donor funds and recipient communities. Finally, it is of vital importance that local representatives and community members have an actual voice in the development process, and that their involvement is not merely a front. Without that component, the entire premise of CDD locals serving as stakeholders in the initiative is negated when they discover that their input is not being taken seriously.

Despite the promises of CDD, it is certainly more appropriate for some projects than others. When deciding whether a project is appropriate for CDD, the following questions must be asked: (1) Is it feasible to conduct the project in a way that will benefit a community on a broad scale? (2) Does it require long-term outside technical support (and if it does, is that feasible?); and (3) Will it be accepted by the community as a whole? (e.g. will locals resent input

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106 Binswanger 29.
108 Id. See also Rawski 7.
109 Moxham 30.
110 Supra 4.
111 Moxham 30.
in their political and social processes, and will it last once the foreign presence has been extracted?)

Beyond the above-outline structure features, CDD will always rely on participation, social inclusion, and project sustainability. Participation requires the gathering of information, consultancy, active participation, and/or empowerment wherein community groups not only participate in design of interventions and allocations of resources, but are also trained and encouraged to continue to act on their own in the future.**

Sustainability needs (i) development-based approaches in provision of goods and services, (ii) effective social mobilization, (iii) financial viability, & (iv) environmental & social soundness. Finally, social inclusion requires overcoming preexisting class, gender, race/ethnicity, religion, and social vulnerability traditions. These are certainly not always entirely achievable long-term aims, but any project undertaken through CDD should first be analyzed as to whether it takes into account these issues, because if from the outset these elements are unachievable, the project should be seriously given a second thought.**

CDD projects are context-sensitive and require individual and diverse approaches in order to succeed, plus they need the ability to evolve over time. As a result, the endurance of the project itself, as well as the dedication to maintaining the loose ties formed through CDD efforts on the ground, should be considered in preparing CDD initiatives.

As far as particular appropriate primary CDD subjects, those include rural development, especially agricultural or fisheries and aquaculture development, education, minimal land reform projects, and minimal civil rights and equal rights movements indirectly promoted by being

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112 Dahl-Ostergaard 3.
113 Id.
114 Id. at 4.
115 Id. at 44-50.
116 Id. at 2.
incorporated into project preconditions.\textsuperscript{117} In contrast, inappropriate projects are often large-scale initiatives involving sustained expensive elements that cannot be handled merely on the local scale with outside support from donor or NGO enterprises. Examples of this are major HIV/AIDS initiatives and mass vaccination efforts, widespread telecommunications projects if there is an utter lack of state infrastructure, and roadways that are completely neglected by the government service sector.\textsuperscript{118} However, depending on relationships with private institutions and mid-level government, CDDs that are financially and socially capable of long-term extensive commitments to the projects may be able to overcome these prohibitive issues.\textsuperscript{119}

Many unsuccessful CDDs are the result of unsatisfactory implementation, such as low-level local commitment and weak monitoring and evaluation systems. These problems are not unique to CDD, but when extensive consulting and decision-making rests in local populations, if the project cannot be held together through internal social commitment and external monitoring, mid-course corrections, assessment impacts, and secondary educational programs will not occur and the project can easily fall apart in the midst of implementation.\textsuperscript{120}

Depending on the extent of the funding source and ability to commit to the region for more long-term engagement, many projects that initially seem appropriate will be inappropriate.\textsuperscript{121} The dangers of inappropriate projects are unfeasibility issues – taking on something simply too large, the social risks of getting outsiders involved in a local community’s social fabric and then needing to extricate themselves without harming the local social structure, the physical risks and technical pitfalls associated with taking on infrastructure projects.

\textsuperscript{117} Supra 111.
\textsuperscript{119} Id.
\textsuperscript{120} Dahl-Ostergaard 2.
\textsuperscript{121} Id.
(including the need for servicing and maintenance), as well as the risk of unsustainable development (again, partially related to the need for maintenance and servicing), and challenges that arise when shifting community-management to local government management in the event of larger scale projects.

SECTION VI: CONCLUDING IMPRESSIONS

Primary projects are frequently employed with greater local benefit, which is the ultimate goal of development. Short-term remedies do not cure long-term inadequacies, and thus true sustainable development necessitates making a real impact on a developing community. CDD achieves that by engaging with locals, empowering them to dictate what their community needs and how to achieve it, while promoting civic engagement and training them in important skills such as contract negotiation abilities and financial reporting processes. In turn, these improved development initiatives reflect well on the institutions that fund them, but demonstrate that development aid does not have to be a “big black money hole” that results in minimal improvement and unaccounted for expenses. Due to these benefits across the board, CDD should be used not only by organizations that decide to use it as the primary framework for their development initiatives, but also by other institutions that prefer to retain more traditional institution organization, but can employ CDD as a key component of a greater structure. Whether it is the central focus of a project from brainstorming to successful implementation, or simply allowing locals to have a strong voice at the decision-making table during specific portions of the development process, CDD should be considered viable approach to development
that has the ability to succeed on all fronts and improve development institutions, donor faith in
development aid, and local lives in underdeveloped and developing countries.